

Exhibit A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing civil action in the State Court of Fulton County no. **22EV006603** upon the Defendant by mailing via USPS certified and registered to Corporation Service Company Georgia, the Defendant's registered agent on file with the Secretary of State, which will be automatically forwarded as same to the Defendant at the following address:

Corporation Service Company Georgia
2 Sun Court, Suite #400
Peachtree Corners, GA 30092

This 2nd day of December, 2022.

A handwritten signature in black ink, appearing to read 'Shaun Chappell', written over a horizontal line.

Shaun Chappell, Plaintiff *In Pro Se*

Shaun Chappell
6087 Camden Forrest Drive
Riverdale, GA 30296
E-mail: shaun.chappell@me.com

GEORGIA, FULTON COUNTY

STATE COURT OF FULTON COUNTY
Civil DivisionState Court of Fulton County
DO NOT WRITE IN THIS SPACE ***EFILED***

CIVIL ACTION FILE #: 22EN006603

File & ServeXpress
Transaction ID: 68469513
Date: Nov 30 2022 01:40PM
Donald Talley, Chief Clerk
Civil Division**Pauper's Affidavit**SHAUN CHAPPELL
6087 CAMDEN FORREST DRIVE
RIVERDALE, GA 30296

Plaintiff's Name, Address, City, State, Zip Code

vs.

LIBERTY MUTUAL PERSONAL INSURANCE COMPANY

175 BERKELEY STREET
BOSTON MA 02116

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ 537,655.58
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ 7%/month
<input type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ 0
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$
<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO.	

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: Shaun Chappell

shaun.chappell@me.com

Address: 154 Rainbow Way, Unit 109

City, State, Zip Code: Fayetteville, GA 30214

Phone No.: (314) 200-5351

An answer to this complaint, which is herewith served upon you, must be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSES MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

Donald Talley, Chief Clerk (electronic signature)

SERVICE INFORMATION:

Served, this _____ day of _____, 20____.

DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20____. _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

State Court of Fulton County

FILED

File & ServeXpress

Transaction ID: 68469513

Date: Nov 30 2022 01:40PM

Donald Talley Chief Clerk

Civil Division

1 Shaun Chappell
2 6087 Camden Forrest Drive
3 Riverdale, GA 30296
4 Phone | (314) 200-5351
5 shaun.chappell@me.com

6 STATE COURT OF FULTON COUNTY

7 GEORGIA

8 SHAUN CHAPPELL,

9 Plaintiff,

10 vs.

11 LIBERTY MUTUAL PERSONAL INSURANCE
12 COMPANY,

13 Defendant

Case No.: 22EN006603

COMPLAINT FOR DAMAGES PURSUANT
TO OCGA 40-6-273, OCGA 33-6-30, OCGA
33-6-33, OCGA 33-6-34, OCGA 51-12-5.1(B)

14 BACKGROUND OF CAUSE OF ACTION

15 Unforeseen and unprovoked conditions and circumstances produced by entities
16 representing and contracted with the Defendant caused a chain reaction of negligence wreaking
17 havoc on the life of the Plaintiff, a resident of the State of Georgia. Supported by police report
18 no. 2021-010767, "Exhibit 1" attached hereto, recorded with the South Fulton Police
19 Department, on the night of August 2, 2021, Plaintiff was rear-ended by a Nissan Sentra insured
20 by the Defendant, traveling at approximately 45 mph, while Plaintiff was safely and legally idle
21 with flashing hazard lights on. Whilst discombobulated, Plaintiff barely saw a person fleeing on
22 foot across the street from the insured vehicle that struck the Plaintiff's 2012 Toyota Prius
23 primarily, and at the time being used for rideshare services with LYFT.
24 Since the hit-and-run crime, the gross negligence of fleeing the scene of the accident initiated a
25

26 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
27 34, OCGA 51-12-5.1(B) - I
28

1 four-and-a-half-week impractical investigation by the Defendant intensifying the repercussions
2 suffered by the Plaintiff. The Defendant is an underwriting company of the Liberty Mutual
3 Group financially responsible for its own insurance products. O.C.G.A. §40-6-273 details duty to
4 report an accident resulting in injury, death, or property damage providing, "The driver of a
5 vehicle involved in an accident resulting in injury to or death of any person or property damage
6 to an apparent extent of \$500.00 or more shall immediately, by the quickest means of
7 communication, give notice of such accident to the local police department if such accident
8 occurs within a municipality." The Defendant's business profile is supported by "Exhibit 11"
9 attached hereto.
10
11

12 Plaintiff filed suit against the Insured for damages resulting from this crime in the
13 Superior Court of Fulton County State of Georgia, case number **22022CV360742**. The hearing
14 was held on September 20, 2022, by the Honorable Belinda E. Edwards of the Atlanta Judicial
15 District. The Court issued final order stating, "The Petitioner is entitled to a judgment in the
16 (amount) of **\$37,655.58** representing compensatory damages and **\$250,000.00** representing
17 punitive damages. SO ORDERED this 20th day of September 2022." The Final Order of this
18 hearing is attached hereto as, "Exhibit 2." Approximately one year prior to legal action against
19 the Insured, the Defendant came to terms with the results of their investigation.
20
21

22 During the span of time the Defendant delayed acceptance of full at-fault liability,
23 Plaintiff lost nearly full capacity to navigate life. Plaintiff was suddenly stripped of independent
24 transportation serving simultaneously as Plaintiff's primary means of income. In an instant,
25 Plaintiff lost the capacity to provide for himself as an independent private resident being
26 deprived of his livelihood and having to become a dependent on the State of Georgia as a means
27 of survival. Injury due to the sudden, powerful impact suspended Plaintiff's physical capacity to
28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 2

1 navigate life per usual. Chiropractic treatment with Twisted Spine Rehabilitation began
2 immediately the following morning on August 3, 2021. Unfortunately, the deferred acceptance
3 of at-fault liability caused a suspension from chiropractic treatment services until funds were
4 secured by insurance. The postponement of chiropractic treatment adversely effected the healing
5 course of the Plaintiff dealing with physical pain, financial stress, and varying degrees of trauma.
6

7 Two weeks after postponement of chiropractic treatment, services resumed once
8 resources from the State of Georgia were approved on behalf of the Plaintiff. One week later,
9 Plaintiff was notified of a family emergency requiring him to be in Richmond, VA, with his twin
10 sister, younger sister, and mother. Ordinarily, Plaintiff would have driven to Virginia in the 2012
11 Toyota Prius that was, since the accident, a total loss. Physical pain, resumed chiropractic
12 treatment, and depleted financial accounts prevented Plaintiff from being able to travel by
13 airplane. Plaintiff's grandmother suffered a stroke, and he had been stripped of the resources to
14 reach her. The Defendant finally and reluctantly accepted full at-fault liability on September 2,
15 2021, an entire month after the hit-and-run crime had been committed. Plaintiff's grandmother
16 passed away on September 3, 2021. Plaintiff's life has not been the same since.
17

18 JURISDICTION AND VENUE

19 The State Court of Fulton County in accordance with O.C.G.A. §15-7-4 has
20 jurisdiction to preside over this case stating:
21

22 a. Each state court shall have jurisdiction, within the territorial limits of the county or
23 counties for which it was created and concurrent with the superior courts, over the
24 following matters:
25

26 2. The trial of civil actions without regard to the amount in controversy, except those
27 actions in which exclusive jurisdiction is vested in the superior courts;
28

1 6. Review of decisions of other courts as may be provided by law.

2 c. Each judge of the state court shall have authority to perform any judicial act which he or
3 she is lawfully entitled to perform, regardless of where such judge is located when such
4 judicial act is performed.
5

6 This Court further presides over this case in accordance with O.C.G.A. §50-2-21(a) stating, "The
7 jurisdiction of this state and its laws extend to all persons while within its limits, whether as
8 citizens, denizens, or temporary sojourners." The Defendant insures the out-of-state vehicle with
9 a Florida license plate abandoned at the scene of the crime and the temporary sojourner having
10 filed on foot.
11

12 EXECUTION OF SERVICE OF PROCESS

13 Service is perfected according to O.C.G.A. §9-11-4 stating:

14 e. 1. A. If the action is against a corporation incorporated or domesticated under the laws
15 of this state or a foreign corporation authorized to transact business in this state, to the
16 president or other officer of such corporation or foreign corporation, a managing agent
17 thereof, or a registered agent thereof, provided that when for any reason service cannot be
18 had in such manner, the Secretary of State shall be an agent of such corporation or
19 foreign corporation upon whom any process, notice, or demand may be served. Service
20 on the Secretary of State of any such process, notice, or demand shall be made by
21 delivering to and leaving with him or her or with any other person or persons designated
22 by the Secretary of State to receive such service a copy of such process, notice, or
23 demand, along with a copy of the affidavit to be submitted to the court pursuant to this
24 Code section.
25
26
27

1 Plaintiff has served the Defendant's registered agent to receive service of process and the
2 Secretary of State in accordance with O.C.G.A. §9-11-4(e)(1)(A).

3
4 PERPETUAL CAUSE OF ACTION

5 Plaintiff has been swift and transparent with communications relating to the
6 accident, medical treatment, submission of forms, and even, dire overwhelming circumstances
7 including the family emergency throughout the whole of the claims settlement process. The
8 professionalism extended to the Defendant was not reciprocated in the rendering of services.
9 Plaintiff suspects his transparency may have been regarded as an opportunity to "squeeze" him
10 into an inefficient, lowball settlement. One primary reasonable consideration to support the
11 suspicion is the fact that no new evidence or supporting documentation has been presented since
12 the August 5, 2021, release of Exhibit 1, and it was based on this police report that the Defendant
13 accepted full at-fault liability. There is no reasonably supported justification for the additional
14 four weeks of delay to acceptance.
15

16
17 In a correspondence dated August 16, 2021, addressed to the Insured of the
18 Defendant presented to the Superior Court of Fulton County, claim adjuster, Jaclyn Gildee,
19 specifically gave the Insured seven days from the date of the letter to respond or "we will
20 evaluate the claim with the information we have available and proceed with handling of this
21 claim..." The default date to respond according to the correspondence was August 23, 2021.
22 May the Court note that the claim with the Defendant was initiated August 2, 2021, and the
23 correspondence to the Insured was not issued until two weeks later in clear violation of O.C.G.A.
24 §33-6-34(3) stating, "Failing to adopt and implement procedures for the prompt investigation
25 and settlement of claims arising under its policies."
26
27

28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 5

1 Furthermore, since the Insured defaulted on response according to the allotted
2 time communicated by the Defendant on August 23, 2021, Plaintiff was delayed an additional
3 ten days by the Defendant to accept full at-fault liability with no new information produced since
4 the initial week of the hit-and-run crime. The record of mishandling claim no. 046444805 by the
5 Defendant as demonstrated in a series of correspondences exchanged throughout the month of
6 August shows contempt for the laws enacted to protect and secure residents of the State of
7 Georgia, including clear violation of O.C.G.A. §33-6-34(2) stating, "Failing to acknowledge
8 with reasonable promptness pertinent communications with respect to claims arising under its
9 policies."
10

11
12 On September 2, 2021, at 1:18 pm, Jaclyn Gildee, Claims Resolution Specialist
13 III employed by the Defendant, left a voicemail on the cellphone of the Plaintiff stating, "I was
14 able to go ahead and just confirm everything with GEICO, so, with the information that I have
15 right now, we're gonna go ahead and afford coverage through us, and accept liability because of
16 the police report, photos, and statement that you gave us. Umm, so we have afforded coverage
17 and accepted liability. Again, caveat, if we get new information that supports the vehicle was
18 stolen, I will have to reassess this, but with everything that I have right now, we are moving
19 forward, again, affording coverage, accepting liability and if we get new information, I'll review
20 it. But for now, this is our decision."
21

22
23 The voicemail clearly evinces violation of O.C.G.A. §33-6-34(9) stating,
24 "Unreasonably delaying the investigation of payment of claims by requiring both a formal proof
25 of loss and subsequent verification that would result in duplication of information and
26 verification appearing in the formal proof of loss form." The "caveat" of the voicemail warns
27 Plaintiff that the adjuster insists on investing energy and efforts not in resolution of the claim, but
28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 6

1 to the contrary, in exploring avenues to avoid accountability and liability for the damages arising
2 out of the claim which clearly violates O.C.G.A. §33-6-34(4) stating, “Not attempting in good
3 faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability
4 has become reasonably clear.”
5

6 The call with GEICO references the night of the crime, when Plaintiff reported
7 the accident to GEICO, his insurance provider. It was GEICO that assigned Plaintiff claim no.
8 0629543110000001 for the records of GEICO whilst managing a claim for their Insured, and
9 then provided Plaintiff with the policy number and insurance provider of the at-fault party,
10 Liberty Mutual Personal Insurance Company, covering the insured vehicle that struck Plaintiff.
11 The Defendant was immediately called and notified of the hit-and-run crime being provided the
12 make, model, color, and license plate of the vehicle with the policy number provided by GEICO.
13 The Defendant confirmed coverage for the vehicle that struck Plaintiff and initiated an auto-
14 accident claim referenced by claim no. 046444805.
15

16 Evinced in a series of email correspondences beginning a day before the “at-fault
17 acceptance” voicemail, Jaclyn Gildee continued to invest efforts in avoiding liability by framing
18 or misconstruing the claim established with GEICO in a way that purportedly insures the
19 criminal behind the wheel of the hit-and-run. Ms. Gildee demonstrated significant incompetence
20 and negligence for failure to distinguish between the insurance providers and the insured they
21 cover after over four weeks of investigation, claiming in a recorded phone conversation with
22 Plaintiff, “it may be possible that the at-fault vehicle is covered by two insurance companies,” to
23 which Plaintiff objected, stating, “GEICO is definitely my insurance provider, and if they were
24 covering both vehicles, they would know, which they do know they only cover mine, so they
25 provided me with your information to file a claim because they do not cover the vehicle that you
26 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
27 34, OCGA 51-12-5.1(B) - 7
28

1 insure.” Plaintiff and GEICO claims adjuster, Tanesha, debated with Jaclyn Gildee for two days
2 over whom GEICO is responsible for insuring in this claim including having to resubmit
3 GEICO’s Declaration Page on behalf of the Plaintiff. Once Jaclyn Gildee conceded whilst in
4 violation of O.C.G.A. §33-6-34, she left the voicemail on the cellphone of the Plaintiff in this
5 case accepting full at-fault liability.
6

7 Since acceptance, the Defendant failed to fulfill legal obligations and fiduciary
8 duty as established according to O.C.G.A. §33-6-30, “Unfair Claims Settlement Practices Act,”
9 and specifically, O.C.G.A. §33-6-34(5) stating, “Compelling insured or beneficiaries to institute
10 suits to recover amounts due under its policies by offering substantially less than the amounts
11 ultimately recovered in suits brought by them.”
12

13 Due to the fact Plaintiff was active on the LYFT platform, the insurance provider
14 for LYFT, Progressive Insurance, was notified and initiated an auto-accident claim referenced by
15 claim no. 21-7808056, and assigned to claims adjuster, Kimberly Maldonado. The afternoon of
16 August 3, 2021, less than 24 hours since the hit-and-run crime, Kimberly Maldonado reported to
17 Plaintiff via phone call that she successfully contacted Jakeria Bell on a recorded call, one of the
18 Insureds on the policy of the abandoned 2018 white, Nissan Sentra that struck Plaintiff in the
19 rear the night before. She confessed that she was, “out drinking and does not remember what
20 happened last night, and still putting the pieces together as of this morning.”
21
22

23 This information was expressed directly to the Defendant via claims adjuster,
24 Jaclyn Gildee, who dismissed the information as an unsubstantiated rumor when communicated
25 by the Plaintiff, however, Ms. Gildee did confirm receipt of Exhibit 1 issued by the South Fulton
26 Police Department that has served as the primary substantial evidence used to determine at-fault
27 liability. The Defendant violated O.C.G.A. §33-6-34(2) once receiving the information from
28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 8

1 Plaintiff stating, "Failing to acknowledge with reasonable promptness pertinent communications
2 with respect to claims arising under its policies." Plaintiff realized the strategy and effort of the
3 Defendant to potentially stall to sabotage the claims settling process, and so, opted to initiate a
4 claim with the Georgia Office of Insurance and Safety Fire Commissioner to investigate their
5 practices.
6

7 A record of correspondences demonstrate that the Defendant failed to promptly
8 and accurately, or truthfully, communicate with Complaints Analyst, Menase Zewde, as evinced
9 in correspondences submitted to Plaintiff, as well as, a false written statement submitted by
10 Christopher Porter, Senior Customer Advocate for the Defendant on August 24, 2021, as
11 "Exhibit 3" attached hereto. The false statement reads, "The insured reported that her vehicle
12 was stolen the morning before the loss occurred." Officer Bell, of the South Fulton Police
13 Department, at the scene of the hit-and-run crime verbally communicated to Plaintiff that the
14 abandoned vehicle was **not** stolen, and since, no stolen vehicle police report has ever been
15 produced. Communicating to the Office of Insurance and Safety Fire Commissioner that the car
16 was reported stolen is a clear violation of O.C.G.A. §33-6-34(1)(3) stating, "Knowingly
17 misrepresenting to claimants and insureds relevant facts or policy provisions relating to
18 coverages at issue..." and, "failing to adopt and implement procedures for the prompt
19 investigation and settlement of claims arising under its policies." Plaintiff resolved to submit
20 both property and bodily injury demand letters.
21
22
23

24 Furthermore, Jaclyn Gildee submitted to Menase Zewde a copy of a
25 correspondence issued to the Insured of the at-fault vehicle dated August 16, 2021, in which she
26 cautioned, "If you do not contact us within 7 days of the date of this letter, we will evaluate the
27 claim with the information we have available and proceed with handling of this claim in
28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 9

1 accordance with the terms of your policy.” The Defendant unequivocally failed to handle the
2 claim. According to this correspondence, the expiration for the Insured to make contact was
3 August 23, 2021, and yet, at-fault was not accepted by the Defendant until September 2, 2021,
4 evincing a clear violation of O.C.G.A. §33-6-34(7) stating, “When requested by the insured in
5 writing, failing to affirm or deny coverage of claims within a reasonable time having completed
6 its investigation related to such claim or claims.”

8 On September 7, 2021, Plaintiff submitted the “Demand for Damages Relief”
9 letter to the bodily injury adjuster, Jaclyn Gildee, detailing the causes and corresponding
10 elements used to calculate and determine a fair and just bodily injury settlement. The response
11 received stated, “I received your demand, thank you. At this time, I cannot honor your demand of
12 \$42,900. No supporting documentation has been submitted for review...” evincing a clear
13 violation of O.C.G.A. §33-6-34(6) stating, “Refusing to pay claims without conducting a
14 reasonable investigation.” On September 21, 2021, Plaintiff submitted the ‘Amended Demand
15 for Damages Relief’ letter to Jaclyn Gildee and Tanika Belnavis, Liberty Mutual Personal
16 Insurance Company team manager, detailing the causes and corresponding elements used to
17 calculate and determine a fair and just bodily injury settlement at the time.

20 On September 30, 2021, Ms. Gildee responded, “I have reviewed your demand. I
21 cannot honor your demand of \$46,710. With the information provided, I can offer \$3,416.50 to
22 settle the injury portion of your claim. Please know that \$1,816.50 of the \$3,416.50 has already
23 been submitted to your medical provider.” This is the offer, attached hereto as “Exhibit 4,” to
24 settle stripping Plaintiff of his livelihood and causing Plaintiff to miss once in a lifetime
25 moments. The Defendant’s denial clearly violates O.C.G.A. §33-6-34(10)(5) stating, “When
26 requested by the insured in writing, failing in the case of claims denial or offers of compromise
27 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
28 34, OCGA 51-12-5.1(B) - 10

1 settlement to provide promptly a reasonable and accurate explanation of the basis for such
2 actions. In the case of claims denials, such denials shall be in writing.” And, “Compelling
3 insureds or beneficiaries to institute suits to recover amounts due under its policies by offering
4 substantially less than the amounts ultimately recovered in suits brought by them.” Plaintiff
5 rejected the contemptuous offer.
6

7 On October 12, 2021, Plaintiff submitted the ‘Demand for Damages Pursuant to
8 O.C.G.A. §33-6-30’ letter to the Defendant via email to Tanika Belnavis, Charidy Russaw-
9 Dorame, and Jaclyn Gildee. Plaintiff received an email on October 21, 2021, acknowledging
10 receipt of the ‘Demand for Damages Pursuant to O.C.G.A. §33-6-30’ but neglecting to address
11 any of the prohibited practices in which she engaged, then, persisting in her demonstration of
12 contempt for the laws of the State of Georgia, particularly, the Unfair Claims Settlement Practice
13 Act. Jaclyn Gildee responded in the email correspondence stating, “I have reviewed your new
14 demand. I cannot honor your demand of \$408,833.90. With the information provided, I can offer
15 \$3,416.50 to settle the injury portion of your claim...I will not be able to offer lost wages under
16 the injury portion as well as we do not owe to double pay for lost wages...”
17

18 The refusal to acknowledge and refute specific merits violates O.C.G.A. §33-6-30
19 committing the prohibited practice of, “When requested by the insured in writing, failing in the
20 case of claims denial or offers of compromise settlement to provide promptly a reasonable and
21 accurate explanation of the basis for such actions...” as written in O.C.G.A. §33-6-34(10).
22 Furthermore, the Defendant contradicts a prior email dated September 30, 2021, from Jaclyn
23 Gildee stating, “Regarding your lost wages, I do not have documentation supporting your wage
24 loss being claimed. Please feel free to submit any wage documentation (W-2, paystubs, etc.) you
25 have to support your wages lost. Once I have this documentation, I will review it for possible lost
26
27
28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 11

1 wages amounts to be included in the offer.” Then she communicates that Property Damage will
2 be covering lost wages, however, Plaintiff had not received a response to lost wages supporting
3 documents emailed on September 10, 2021, to Charidy Russaw-Dorame mishandling the claim
4 until forty-two (42) days later, on October 22, 2021. The email correspondence grossly
5 manipulates financial figures with arbitrary “approx. business expenses” deductions, and a bogus
6 settlement timeframe of six weeks.
7

8 Throughout the months of August, September, October, and until present-day, the
9 Defendant has habitually disregarded the merits and elements of every cause in demand letters
10 submitted by Plaintiff, failing to refute point-for-point specific objections to determinations
11 expressed in the demand letters. The Defendant neglected to acknowledge and apply monetary
12 compensation based on the merits of the demand with such frequency so as to indicate a general
13 business practice to engage in such conduct, violation O.C.G.A. §33-6-33. May the Court note,
14 since the hit-and-run crime committed against Plaintiff in conjunction with the gross mishandling
15 of claim no. 046444805 by the Defendant, Plaintiff has essentially been forced into a dependent
16 status on the State of Georgia receiving minimal survival funds from unemployment benefits,
17 rental assistance, SNAPS, and the Georgia Crime Victims Compensation Program.
18

19 On February 15, 2022, Plaintiff filed ‘Complaint for Damages Pursuant to OCGA
20 40-6-273, OCGA 51-1-6’ in the Superior Court of Fulton County Georgia against the
21 Defendant’s insurance policy holder, Rose Thompson, attached hereto as “Exhibit 5.” On March
22 17, 2022, Plaintiff received correspondence from the Defendant’s adjuster, Stacey Cox,
23 confirming the failed effort to impose the derisive offer of \$3,665.38 onto Plaintiff has been
24 returned, attached hereto as “Exhibit 6.” Consistent with the investigation, results
25 underperformed by the Defendant, Ms. Thompson failed to ever respond to the action filed and
26 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
27 34, OCGA 51-12-5.1(B) - 12
28

1 served against her to the satisfaction of the Court. On April 20, 2022, Plaintiff filed 'Motion for
2 Default Judgment Pursuant to GA. R. SUPER. CT. 15' against the Defendant's Insured. On
3 September 20, 2022, trial was held in the Superior Court of Fulton County Georgia, Plaintiff's
4 argument was presented and heard, the Defendant remained absent since the scene of the crime,
5 and final judgment was ordered in favor of Plaintiff against the Insured, Rose Thompson.
6

7 Claims Resolution Specialists representing the Defendant, Stacey Cox and
8 Reginald Hill, were notified in demand letters submitted via email of the final order against the
9 Insured policy holder on September 22, 2022, and October 6, 2022, attached hereto as "Exhibit
10 7." The Defendant via Claims Resolution Specialists declined to ever return email to Plaintiff,
11 neither superior, Nikki Sasso, returned phone calls from voicemail messages, nor honored the
12 final judgment, nor any effort to settle this claim. The only defense the Defendant opts to pursue
13 involves insulting the integrity of Georgia's Superior Courts, deflect from the hit-and-run crime,
14 and deflect from the mishandling of the claim against the Insured.
15
16

17 The Defendant chose against cooperating and conversing or corresponding to
18 settling with Plaintiff, opting to hire legal counsel on behalf of the Insured Defendant. Attached
19 hereto as "Exhibit 8" is the correspondence received from the Defendant's legal representation
20 on October 19, 2022, in response to demand letters to pay final order judgment. Plaintiff filed
21 "Motion for Substitution of Party In Opposition of Motion to Vacate and Set Aside Judgment"
22 on October 24, 2022, "Exhibit 9" attached hereto, against the Defendant's 'Motion to Vacate and
23 Set Aside Judgment." The Superior Court of Fulton County Georgia communicated to both
24 Defendant and Plaintiff that the Final Order judgment of September 20, 2022, **will stand** as final
25 and the motions will not be heard.
26
27

28 **JUDGMENT AGAINST DEFENDANT**

COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-34, OCGA 51-12-5.1(B) - 13

1 IN CONSIDERATION OF THE AFOREMENTIONED CAUSES, ELEMENTS
2 AND MERITS OF THIS CASE PRESENTED, Plaintiff entreats the State Court of Fulton
3 Georgia to also consider the relevance of the explosive real estate and tourism industry
4 overwhelming longtime residents of this State. Drastically higher crime rates and auto-related
5 incidents, both suffered by Plaintiff in this case, are attributed to over 50 million annual visitors
6 to the City of Atlanta, and over 100 million visitors to the State of Georgia annually as recorded
7 and reported by a myriad of local and state agencies. Residents of the State of Georgia are
8 finding themselves vulnerable to this impressive volume of travelers and visitors, and so, rely
9 heavily upon the enacted State laws and the enforcement of these laws by our Courts put in place
10 to secure and protect persons and property against local, and especially, nonlocal threats to the
11 functionality of our community.

14 Plaintiff does not purport to be an attorney or legal professional, but to the
15 contrary, simply a longtime, tax-paying resident fighting for his life with no means since a crime
16 was committed against him, and praying the Court enforces the laws enacted to protect and
17 secure such residents. Plaintiff even faces eviction evinced by "Exhibit 10" as amplified
18 repercussions of the Defendant's negligent practices.

20 Plaintiff asks this Court to consider the financial burden the Defendant has
21 deflected to the State when the Georgia Crime Victims Compensation Program awarded the
22 Plaintiff funds for relief stating, "After careful review...It is our hope that these funds will assist
23 with easing some of the financial burden that has resulted from being an innocent victim of a
24 violent crime." The award issued from the State of Georgia included terms and conditions that
25 obligate Plaintiff to take this legal action against the Defendant. The award letter states,

27 "Acceptance of an award...based on damages from a criminal act shall constitute an agreement

28 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
34, OCGA 51-12-5.1(B) - 14

1 on the part of the recipient reasonably to pursue any and all civil remedies...” O.C.G.A. §17-15-
2 12(b).

3 Plaintiff entreats this Court to honor its fiduciary duty to uphold established law
4 and order by finding the Defendant to be in contempt of the State of Georgia whilst violating the
5 Unfair Claims Settlement Practices Act as explicitly expressed in O.C.G.A. §33-6-30, O.C.G.A.
6 §33-6-33, and O.C.G.A. §33-6-34; as well as, demonstrating contempt for the residents of the
7 State of Georgia whilst violating the Unfair Claims Settlement Practices Act warranting punitive
8 damages according to O.C.G.A. §51-12-5.1(b).
9

10 Due to the causes bringing forth claim number 046444805 and the gross
11 mishandling of said claim bringing forth this civil action against the Defendant, Liberty Mutual
12 Personal Insurance Company, Plaintiff prays for relief by Judgment and Final Court Order. In the
13 State Court of Fulton County, Georgia, Plaintiff implores the Court to review, interpret, and
14 determine the fact the Defendant, Liberty Mutual Personal Insurance Company, has perpetually
15 engaged in specific prohibited practices conducted and facilitated by Jaclyn Gildee, Charidy
16 Russaw-Dorame, Tanika Belnavis, Stacey Cox, Reginald Hill and Nikki Sasso, all varying levels
17 of claims adjusters employed by the Defendant mishandling claim number 046444805.
18

19 The Defendant has absolutely and unequivocally failed to answer and justify
20 offering a difference of -\$284,239.08 less than what a Superior Court Judge determined the
21 damages are worth. Plaintiff seeks judgment in accordance with the demand letter submitted to
22 and responded by the Defendant dated October 6, 2022, upholding the Final Order judgment of
23 the Superior Court of Fulton County of \$287,655.58. In addition, demanded of the Defendant,
24 Plaintiff seeks the maximum award of \$250,000.00 in punitive damages for the blatant contempt
25 of laws enacted by this State to protect and secure its residents as explicitly expressed pursuant to
26 COMPLAINT FOR DAMAGES PURSUANT TO OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-
27 34, OCGA 51-12-5.1(B) - 15
28

O.C.G.A. §33-6-30, O.C.G.A. §33-6-33, O.C.G.A. §33-6-34, and O.C.G.A. §51-12-5.1(b).

HEREIN and HEREBY this civil action in the State Court of Fulton County, relief for the accumulation of damages suffered by the Plaintiff is requested in the judgment award amount of \$287,655.58 representing compensatory damages according to the final order of the Superior Court of Fulton County, civil action no. 22022CV360742, and \$250,000.00 representing punitive damages against the Defendant in favor of the Plaintiff for clear and explicit violations of Georgia's Unfair Claims Settlement Practices Act.

Respectfully submitted,

Dated this 22nd day of November, 2022.

Shaun Chappell, Plaintiff *In Pro Se* /s/

:Attachments

EXHIBIT

1

Agency Case Number 2021010767		Agency NCIC Number GA0607200		GEORGIA MOTOR VEHICLE CRASH REPORT		County FULTON		Date Rec. By GDOT	
Estimated Crash Date 08/02/2021 Time 21:40		Dispatch Date 08/02/2021 Time 21:40		Arrival Date 08/02/2021 Time 21:52		Total Number Of: Vehicles 2 Injuries 0 Fatalities 0		Inside City Of: SOUTH FULTON	
Road of Occurrence OLD NATIONAL HWY				At Its Intersection With PLEASANT HILL RD				<input type="checkbox"/> Corrected Report <input type="checkbox"/> Suppl. To Original <input checked="" type="checkbox"/> Hit and Run?	
Not At Its Intersection But _____				Of: _____					
Latitude (Y) +33.3559 (Format) 00.00000				Longitude (X) -84.2816 (Format) -00.00000					
Unit # 1 <input checked="" type="checkbox"/> Driver <input type="checkbox"/> Ped <input type="checkbox"/> Bike <input type="checkbox"/> Susp At Fault		LAST NAME FIRST MIDDLE Address City State Zip DOB		Unit # 2 <input checked="" type="checkbox"/> Driver <input type="checkbox"/> Ped <input type="checkbox"/> Bike <input type="checkbox"/> Susp At Fault		LAST NAME FIRST MIDDLE Address City State Zip DOB			
Driver's License No. _____ Class _____ State _____ Country US		Insurance Co. NO INSURANCE Policy No. NO INSURANCE Telephone No. _____		Driver's License No. _____ Class CM State GA Country US		Insurance Co. GEICO GENERAL Policy No. 4543589420 Telephone No. (321) 917-3110			
Year 2018 Make NISS Model SENTRA		Vehicle Color WHI		Year 2012 Make TOYT Model PRIUS		Vehicle Color GRAY			
State FL County WALTON Year 2021		Trailer Tag # _____ State _____ County _____ Year _____		State GA County FULTON Year 2022		Trailer Tag # _____ State _____ County _____ Year _____			
<input type="checkbox"/> Same as Driver Owner's Last Name BELL, JAKERIA M First _____ Middle _____		Address _____ City _____ State FL Zip 32547-		<input checked="" type="checkbox"/> Same as Driver Owner's Last Name CHAPPELL, SHAUN BOOKER-T First _____ Middle _____		Address _____ City _____ State GA Zip 30316-			
Removed By GRAY S TOWING		<input type="checkbox"/> Request <input type="checkbox"/> List		Removed By DRIVER		<input type="checkbox"/> Request <input type="checkbox"/> List			
Alcohol Test 2	Type _____	Results _____	Drug Test 2	Type _____	Results _____	Alcohol Test 2	Type _____	Results _____	Drug Test 2
First Harmful Event: 11		Most Harmful Event: 11		Operator/Ped Cond: 2		First Harmful Event: 11		Most Harmful Event: 11	
Operator Contributing Factors: 3		Vehicle Contributing Factors: 1		Roadway Contributing Factors: 1		Operator Contributing Factors: 1		Vehicle Contributing Factors: 1	
Direction of Travel: 2		Vehicle Maneuver: 5		Non-Motor Maneuver: _____		Direction of Travel: 2		Vehicle Maneuver: 5	
Vehicle Class: 1		Vehicle Type: 1		Vision Obscured: 1		Vehicle Class: 1		Vehicle Type: 1	
Number of Occupants 1		Area of Initial Contact: 12		Damage to Veh: 4		Number of Occupants 1		Area of Initial Contact: 6	
Traffic-Way Flow: 1		Road Comp: 2		Road Character: 1		Traffic-Way Flow: 1		Road Comp: 2	
Number of Lanes: 2		Posted Speed: 45		Work Zone: 0		Number of Lanes: 2		Posted Speed: 45	
Traffic Ctrl 2		Device Inoperative? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Traffic Ctrl 2		Device Inoperative? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Citation Information:									
Citation # _____		O.C.G.A. § _____		Citation # _____		O.C.G.A. § _____		Citation # _____	
Citation # _____		O.C.G.A. § _____		Citation # _____		O.C.G.A. § _____		Citation # _____	
Citation # _____		O.C.G.A. § _____		Citation # _____		O.C.G.A. § _____		Citation # _____	
COMMERCIAL MOTOR VEHICLES ONLY									
Carrier Name _____									
Address _____ City _____ State _____ Zip _____									
U.S. D.O.T. # _____		No. of Axles _____		G.V.W.R. _____		U.S. D.O.T. # _____		No. of Axles _____	
Cargo Body Type _____	Vehicle Config. _____	Interstate <input type="checkbox"/>	Fed. Reportable <input type="checkbox"/>	Interstate <input type="checkbox"/>	Fed. Reportable <input type="checkbox"/>	Cargo Body Type _____	Vehicle Config. _____	Interstate <input type="checkbox"/>	Fed. Reportable <input type="checkbox"/>
C.D.L.? <input type="checkbox"/> Yes <input type="checkbox"/> No	C.D.L. Suspended? <input type="checkbox"/> Yes <input type="checkbox"/> No			C.D.L.? <input type="checkbox"/> Yes <input type="checkbox"/> No	C.D.L. Suspended? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Vehicle Placarded? <input type="checkbox"/> Yes <input type="checkbox"/> No		Hazardous Materials? <input type="checkbox"/> Yes <input type="checkbox"/> No		Vehicle Placarded? <input type="checkbox"/> Yes <input type="checkbox"/> No		Hazardous Materials? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Haz Mat Released? <input type="checkbox"/> Yes <input type="checkbox"/> No		If YES, Name or 4 Digit Number from Diamond or Box: _____		Haz Mat Released? <input type="checkbox"/> Yes <input type="checkbox"/> No		If YES, Name or 4 Digit Number from Diamond or Box: _____			
1 Digit Number from Bottom of Diamond: _____				1 Digit Number from Bottom of Diamond: _____					
<input type="checkbox"/> Ran Off Road <input type="checkbox"/> Down Hill Runaway <input type="checkbox"/> Cargo Loss or Shift <input type="checkbox"/> Separation of Units									

COLLISION FIELDS

Manner of Collision: 3	Location at Area of Impact: 7	Weather: 1	Surface Condition: 1	Light Condition: 4
------------------------	-------------------------------	------------	----------------------	--------------------

NARRATIVE

Both vehicles were traveling South on Old National Hwy.

Vehicle 1 struck vehicle 2 to the rear. The driver of vehicle 1 then fled the scene on foot.

Vehicle 1 sustained disabling front-end damages and was towed by gray's towing.

No injuries reported.

See abandonment report

* * Continued * *

DIAGRAM

Indicate
North



PROPERTY DAMAGE INFORMATION

Damage Other Than Vehicle:

Owner:

WITNESS INFORMATION

Name (Last, First)	Address	City	State	Zip Code	Telephone Number
--------------------	---------	------	-------	----------	------------------

OCCUPANT INFORMATION

	Name (Last, First):					Address				
1	Age:	Sex:	Unit #	Position:	Safety Eq:	Ejected:	Extricated:	Air Bag:	Injury:	Taken for Treatment:
			1	1	8	1	2	1	0	2
	Injured Taken To:		By:		EMS Notified Time (Fatality Only):		EMS Arrival Time (Fatality Only):		Hospital Arrival Time (Fatality Only):	
2	Name (Last, First): CHAPPELL, SHAUN BOOKER-T					Address: [REDACTED]				
	Age: 38	Sex: M	Unit # 2	Position: 1	Safety Eq: 8	Ejected: 1	Extricated: 2	Air Bag: 2	Injury: 0	Taken for Treatment: 2
	Injured Taken To:		By:		EMS Notified Time (Fatality Only):		EMS Arrival Time (Fatality Only):		Hospital Arrival Time (Fatality Only):	
3	Name (Last, First):					Address:				
	Age:	Sex:	Unit #	Position:	Safety Eq:	Ejected:	Extricated:	Air Bag:	Injury:	Taken for Treatment:
	Injured Taken To:		By:		EMS Notified Time (Fatality Only):		EMS Arrival Time (Fatality Only):		Hospital Arrival Time (Fatality Only):	
4	Name (Last, First):					Address:				
	Age:	Sex:	Unit #	Position:	Safety Eq:	Ejected:	Extricated:	Air Bag:	Injury:	Taken for Treatment:
	Injured Taken To:		By:		EMS Notified Time (Fatality Only):		EMS Arrival Time (Fatality Only):		Hospital Arrival Time (Fatality Only):	

ADMINISTRATIVE

Photos Taken: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	By:	Officer Note: If collision resulted in a fatality, please send prompt notification to the GDOT Crash Reporting Unit via either email at GeorgiaFARS@dot.ga.gov or Fax at (404) 635-2963.
Report By: BELL, O.	Agency: SOUTH FULTON	Report Date: 08/02/2021...
	Checked By: WOOD, L.	Date Checked: 08/04/2021...

EXHIBIT

2

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SHAUN CHAPPELL*Petitioner***and****ROSE THOMPSON***Respondent*§
§
§
§
§**CIVIL ACTION FILE NO.:****2022CV360742**

FINAL ORDER

This matter is before the Court on September 20, 2022, on the Petitioner's *Complaint, Motion for Default Judgment and Amended Exhibits in Support of Motion for Default Judgment*. After a review of the related pleadings the Court finds as follows:

This matter arises out of an automobile accident which occurred on August 21, 2021. The Petitioner was injured as a result of the accident by the Defendant who fled the scene. The Petitioner was able to ascertain that the Defendant was insured and lived in the State of Florida. Service was perfected on the Defendant by O.C.G.A. §40-12-2. The Defendant failed to answer. The Defendant submitted evidence to support his claim that he was unsuccessful in receiving just compensation from the insured Defendant through her insurance company and has suffered loss in income, property damage, pain and suffering. The Defendant submitted the following into evidence:

Loss of 2012 Toyota Prius	\$7,892.00
Loss of Wages	\$34,398.32
Twisted Spine Rehabilitation-College Park	\$2,595.00
FirstKey Homes Rent	\$5,823.64
Atlanta Motor Gallery 2013 Nissan Juke Purchase	\$5,550.00

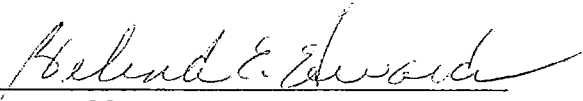
Total \$56,208.96

The Petitioner prayed for punitive damages five times the amount of the damages he incurred due to the insured Defendant's willful misconduct. This amount is more than the maximum amount of \$250,000.00 which can be awarded under O.C.G.A. §51-12-5.1(g). The Petitioner presented evidence that he received a payment of \$10,000.00 from the Georgia Crime Victims Compensation Program, a payment of \$4,888.00 from the State of Georgia Unemployment Insurance Fund and \$3,665.38 from

Liberty Mutual Insurance for lost wages. As such, the Court makes an award in this matter of \$250,000.00 for the Defendant's willful misconduct pursuant to O.C.G.A. 51-12-5-1(g) in punitive damages. The Court awards \$56,208.96 in compensatory damages minus \$18,553.38 received in compensation for a total amount of \$37,655.58 pursuant to O.C.G.A. §51-12-2 *et seq.*

IT IS HEREBY ORDERED that the Petitioner's *Motion for Default Judgment* is granted. The Petitioner is entitled to a judgment in the of \$37,655.58 representing compensatory damages and \$250,000.00 representing punitive damages.

SO ORDERED this 20th day of September, 2022.


Honorable BELINDA E. EDWARDS
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies by efile

EXHIBIT

3



Liberty Mutual.
INSURANCE

Liberty Mutual Insurance

Presidential Service Team
175 Berkeley Street
Boston, MA 02116
Phone: (469) 997-2863
Fax: (603) 422-7900

August 24, 2021

Ms. Menase Zewde
Georgia Office of Insurance & Safety Fire Commissioner
Consumer Services Division
7th Floor, West Tower
2 Martin Luther King, Jr. Drive
Atlanta, GA 30334

Re: Complainant: Shaun Chappell
Named Insured: Rose Thompson
DOI Complaint Number: 555253443
Date of Loss: 8/2/2021
Claim Number: 046444805
Personal Automobile Policy Number: AOV25108838090
Company, NAIC #: Liberty Mutual Personal Insurance Company NAIC 0111-12484

Dear Menase Zewde,

This letter is written in response to the August 16, 2021, correspondence received by our Presidential Service Team regarding the above referenced file.

According to the explanation included in the written complaint, Mr. Chappell, has expressed concerns regarding delays and our liability determination for the above-captioned automobile claim.

The Result of our Review:

On August 2, 2021, we received notice of this loss. The claimant reported that he was rear-ended by the insured's vehicle while stopped at a bus stop. On this same date, we spoke with the claimant to obtain additional information regarding this loss. The claimant reported that was unable to identify the driver of the insured's vehicle and advised that the driver may have fled the scene of the accident on foot after the loss occurred.

On August 6, 2021, our claims team spoke with the insured regarding the facts of loss. The insured reported that her vehicle was stolen the morning before the loss occurred. On August 16, 2021, a reservation of right letter was sent to the insured requesting additional information to complete our coverage investigation. On August 23, 2021, we spoke the claimant and advised him that coverage is still pending and would contact him once our coverage review has been completed. As of this time, we are currently awaiting additional information be provided by the insured to complete our coverage investigation.

While we do regret the claimant's dissatisfaction with the claim experience, our review shows that the claim handling and responses have been handled in a timely manner.

In closing, I hope this letter clarifies our reasoning and provides clarity to Mr. Chappell's concerns. If you have any additional questions, please do not hesitate to contact me.

Respectfully,

Christopher Porter
Senior Customer Advocate
Phone (469) 997-2863
E-Mail: Christopher0980.porter@libertymutual.com

Enclosures: CONFIDENTIAL AND PROPRIETARY-NOT FOR DISTRIBUTION
Reservation of rights letter



CONTACT US

By Phone

Direct: (469) 997-3419
Toll Free: (800) 225-2467
Ext. 73021
Fax: (888) 268-8840

By E-mail

jaclyn.gildee@
libertymutual.com

**Liberty Mutual Personal Insurance
Company**
P.O. Box 5014
Scranton, PA 18505-5014

Visit us online

LibertyMutual.com

About Claims Process

Libertymutual.com/claims-
insurance/about-claims-process

Mobile

Scan QR Code with your
iPhone or Android
smartphone to download
the claims app or download
a free reader app at
www.i-nigma.mobi



August 16, 2021

Rose Thompson
2 Allen Dr
Fort Walton Beach FL 32547-2102

Insured: Rose Thompson
Claimant: Shaun Chappell
Claim Number: LA000-046444805-03
Date of Loss: 08/02/2021
Policy Number: AOV-251-088380-90

Dear Rose Thompson,

We have received a claim arising from the accident that occurred on August 2, 2021. We are handling this case under the following reservation of rights.

While we have attempted to address all coverage considerations related to this claim, Liberty Mutual reserves all rights under applicable law and the policy, including the right to raise additional coverage defenses in the future, the right to withdraw its defense based on future coverage determinations or your failure to comply with your duties under the policy, and the right to seek a judicial determination of our duties under the policy through declaratory action or otherwise.

Liberty Mutual reserves its right to withdraw your defense or deny indemnity coverage if it is determined that your failure to timely report this claim or cooperate in the defense of this claim has prejudiced our rights.

Liberty reserves all rights under the applicable law and policy. This letter should in no way be construed as a waiver of estoppel of any possible coverage defenses afforded by the policy or applicable laws.

We have been trying to make voice to voice contact with you concerning the above mentioned accident. However, you have failed to respond to our attempts to contact you.

Please be reminded that your policy requires you to cooperate with us completely. Please refer to your automobile policy:



PART E - DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit, as often as we reasonably require: a. to physical exams by physicians we select. We will pay for these exams. b. to examination under oath and subscribe the same.
4. Authorize us to obtain: a. medical reports; and b. other pertinent records.
5. Submit a proof of loss when required by us.

If you do not contact us within 7 days of the date of this letter, we will evaluate the claim with the information we have available and proceed with handling of this claim in accordance with the terms of your policy.

Please contact me at 469-997-3419 or Jaclyn.Gildee@libertymutual.com as soon as possible to discuss the claim.

Sincerely,
Jaclyn Gildee
Claims Department

EXHIBIT

4

From: GILDEE, JACLYN JACLYN.GILDEE@libertymutual.com
Subject: RE: Claim#:046444805-03 - Inbound: demand and PST
Date: Sep 30, 2021 at 5:29:42 PM
To: S C shaun.chappell@me.com



Hi Shaun,

I have reviewed your demand. I cannot honor your demand of \$46,710. With the information provided, I can offer \$3,416.50 to settle the injury portion of your claim. Please know that \$1,816.50 of the \$3,416.50 has already been submitted to your medical provider. Your medical provider reduced the bill to \$1,816.50. Once they receive the check submitted today, your balance on that bill will be zeroed out. I have sent you a copy of the check via mail as well for your records.

Regarding your lost wages, I do not have documentation supporting your wage loss being claimed. Please feel free to submit any wage documentation (W-2, paystubs, etc.) you have to support your wages lost. Once I have this documentation, I will review it for possible lost wage amounts to be included in the offer.

I appreciate your time. If you have any questions, please do not hesitate to call or email me.

Jaclyn Gildee

Claims Resolution Specialist III

GRM - Casualty

Safeco and Liberty Mutual Claims

PO Box 5014

Scranton, PA 18505-5014

Direct Number: 469-997-3419

Fax: 603-334-8181 Attn: Your Claim Number

Business Hours: Monday – Thursday 7:00 AM – 4:15 PM CST and Friday 7:00 AM to 11:00 AM CST

Great news!!! You can now opt in for claim updates VIA 2 way text message. Click [here](#) to send me an email to opt in. Please include your claim number and the best number to reach you VIA text.

All Liberty Mutual Claims Employees are currently working from home to protect themselves and others. For faster claims processing and to **avoid any current delays with USPS mail services**, we strongly encourage you to send all correspondence by email or [Sharefile](#).

For the fastest service during normal business hours, ask me how we can message via 2-way Text!

To learn more about Liberty Mutual's privacy policy, go to www.libertymutual.com/privacy.



Policy underwritten by Liberty Mutual Personal Insurance Company

© 2021 Liberty Mutual Insurance Company, 175 Berkeley Street, Boston, MA 02116

From: GILDEE, JACLYN <JACLYN.GILDEE@libertymutual.com>

Sent: Thursday, September 23, 2021 3:20 PM

To: sapipCLMEZ4 <sapipCLMEZ4@LibertyMutual.com>

Subject: Claim#:046444805-03 - Inbound: demand and PST

From: S C <shaun.chappell@me.com>

Sent: Tuesday, September 21, 2021 8:16:34 PM

EXHIBIT

5

1 Shaun Chappell
2 1284 Jandras Lane
3 Atlanta, GA 30316
4 Email | shaun.chappell@me.com
5 In Pro Se

6 IN THE SUPERIOR COURT OF FULTON COUNTY

7 STATE OF GEORGIA

8 SHAUN CHAPPELL,
9 Plaintiff,

Case No.: 2022CV360742

10 vs.

COMPLAINT FOR DAMAGES PURSUANT
TO | O.C.G.A §40-6-273, O.C.G.A §51-1-6

11 ROSE THOMPSON,
12 Defendant

13
14 **COMPLAINT**

15 This complaint for damages against the above-named Defendant addresses the grievances
16 suffered and continuing to be suffered by Plaintiff, the Claimant of Claim No. 046444805 arising
17 out of the hit-and-run crime committed against Plaintiff on August 2, 2021, supported by
18 “Exhibit 1” attached hereto, and grossly mishandled by Liberty Mutual Insurance claims
19 adjusters causing an amplification of the repercussions of the crime on the life of Plaintiff. Jaclyn
20 Gildee, Charidy Russaw-Dorame, Tanika Belnavis, Christopher Porter, and Ashley Wood,
21 amongst others, collectively represent members of the Claim Adjustment Team, or CAT,
22 hereinafter, for the sake of this action and any additional legal proceedings. Liberty Mutual
23 Insurance Company’s CAT responsible for the mishandling of Claim No. 046444805 has
24 demonstrated blatant and shameless disregard for the rules and laws explicitly expressed in The
25 Official Code of Georgia Annotated, also known as O.C.G.A., requiring absolute compliance to
26 legally conduct business in the State of Georgia. This Complaint entreats this Honorable Court
27 COMPLAINT FOR DAMAGES PURSUANT TO | O.C.G.A §40-6-273, O.C.G.A §51-1-6 - 1
28

1 for damages to be paid by order of judgment against the Defendant for failure to fulfill legal
2 obligation to cooperate with Liberty Mutual Insurance Company throughout their internal
3 investigation process according to the correspondence dated and sent August 16, 2021, and
4 attached hereto as "**Exhibit 2.**" Liberty Mutual Insurance Company accepted full at-fault liability
5 on September 2, 2021, in a voicemail message received by Plaintiff.
6

7 Plaintiff accepted a vehicle valuation conducted by Liberty Mutual property damage adjusters
8 led by Charidy Russaw-Dorame totaling \$7,892.00 USD. Per initial request from the Property
9 damage department and affirmed by the Bodily Injury department, lost wages supporting
10 documents including paystubs were submitted on September 8, 2021, with no objection. Also on
11 September 8, 2021, the requested supporting documents were resubmitted to the Bodily Injury
12 department. Claims Adjuster, Jaclyn Gildee, confirmed in a text message established through
13 Liberty Mutual communication service options on August 6, 2021 at 2:19pm, "*I received the one*
14 *email with the dropbox link. It worked. Thank you. I will reach out to you as soon as possible*
15 *with an update.*" Ms. Gildee acknowledged the successful access to supporting documents
16 uploaded to the dropbox link created by Plaintiff, and then goes on for several weeks to come
17 claiming to not have received any supporting documentation for the claim. Plaintiff suffered an
18 averaged loss of \$15,985.38 USD over the months of August, September, and October in lost
19 wages from the crime and continue to lose wages today. Plaintiff was invoiced by Twisted Spine
20 Rehabilitation for \$2,595.00 USD in chiropractic treatment. Plaintiff demands five times the
21 compensatory damages cost for pain and suffering totaling \$132,361.90 USD, in addition to the
22 compensatory costs totaling \$26,472.38 USD. The specific monetary amount required to satisfy
23 this Demand for Damages reflects the total sum of the compensatory damages including vehicle
24 valuation, lost wages, medical expenses, pain and suffering totaling \$158,834.28 USD.
25
26
27
28

COMPLAINT FOR DAMAGES PURSUANT TO | O.C.G.A §40-6-273, O.C.G.A §51-1-6 - 2

JURISDICTION AND VENUE

Pursuant to O.C.G.A. §40-12-3. Venue of Actions Against Nonresidents, the Superior Court of Fulton County has jurisdiction to preside over this case according to the following written law, “All actions brought under this chapter relating to the use of the highways of this state by **nonresident motorists** shall be brought in the county in which the **accident or injury** occurred or the cause of action originated, or in the county of the residence of the plaintiff, as the plaintiff in such action may elect, if the **plaintiff** in such action is a **resident** of the **State of Georgia**.”

EXECUTION OF SERVICE OF PROCESS

Pursuant to O.C.G.A. §40-12-1(a). Appointment of Secretary of State as agent for service of process on nonresidents, the Secretary of State of Georgia has been **served** according to the following written law, “The acceptance by any nonresident of this state, whether a person, firm, or corporation, of the rights and privileges conferred by the laws now or hereafter enforced in this state permitting the **operation of motor vehicles**, as evidenced by the operation of a motor vehicle by any such **nonresident anywhere** within the **territorial limits of this state**, shall be deemed equivalent to the appointment by such **nonresident** of the **Secretary of State of Georgia**, or his successor in office, to be **his true and lawful attorney** in fact upon whom may be served **all summonses** or **other lawful processes** in any action or proceeding against any such nonresident growing out of any accident or collision in which any such nonresident may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle anywhere within the territorial limits of the State of Georgia, and said acceptance or operation shall be a signification of his agreement that any such process against him shall be of the **same legal force and validity as if served upon him personally**.” Pursuant to O.C.G.A. §40-12-2. How service on nonresident made states, “Service of process upon a

1 nonresident pursuant to Code Section 40-12-1 shall be made by serving a copy of the complaint
2 or other pleading with summons attached thereto on the Secretary of State, his duly authorized
3 agent, or his successor in office, along with a copy of the affidavit to be submitted to the court
4 pursuant to this Code section.”

6 **LEGAL AUTHORITY**

7 Plaintiff seeks damages supported by The Official Code of Georgia Annotated §40-6-273
8 stating, “The driver of a vehicle involved in an accident **resulting in injury** to or death of any
9 person or **property damage** to an apparent extent of \$500.00 or more shall immediately, by the
10 **quickest means of communication, give notice of such accident to the local police**
11 **department** if such accident occurs within a municipality. If such accident occurs outside a
12 municipality, such notice shall be given to the office of the county sheriff or to the nearest office
13 of the state patrol.”

14
15 Furthermore, The Official Code of Georgia Annotated §51-1-6 supports Plaintiff stating,
16 “When the law requires a person to perform an act for the benefit of another or to **refrain from**
17 **doing an act which may injure another**, although **no cause of action is given in express**
18 **terms, the injured party may recover for the breach of such legal duty if he suffers damage**
19 **thereby.**” Plaintiff suffered significant injury and property damage from the accident
20 compounded by the Defendant's failure to give any notice or engage in any communication, and
21 so, failing to refrain from doing an act causing injury to Plaintiff whilst breaching legal duty.
22 Defendant was allotted an additional twenty-one days to satisfy demand resulting in default.

25 **JUDGMENT AGAINST DEFENDANT**

26 IN CONSIDERATION OF THE AFOREMENTIONED CAUSES AND ELEMENTS, the
27 Plaintiff requests the Superior Court of Fulton County to also consider the relevance of the
28 COMPLAINT FOR DAMAGES PURSUANT TO | O.C.G.A §40-6-273, O.C.G.A §51-1-6 - 4

1 explosive tourism industry overwhelming residents of this State. Drastically higher crime rates
2 and auto-related incidents, both suffered by Plaintiff in this case, are attributed to over 50 million
3 annual visitors to the City of Atlanta, and over 100 million visitors to the State of Georgia
4 annually as recorded and reported by a myriad of local and state agencies. Residents of the State
5 of Georgia are finding themselves vulnerable to this impressive volume of tourists, and so, rely
6 heavily upon the enacted State laws and the enforcement of these laws by our Courts put in place
7 to secure and protect persons and property against local, and especially, nonlocal threats to the
8 functionality of our community.
9

10 May the Court empathize with the Plaintiff when considering the chain reaction of financial
11 impediments adversely affecting Plaintiff's life due to the mishandling of claim no. LA000-
12 046444805-03. Being stripped of means to earn an income since August 2, 2021, Plaintiff lost
13 the capacity to timely make credit card payments, if at all, rent, and utility payments causing the
14 credit profile of Plaintiff to plummet over the last few months. Plaintiff struggles for
15 foundational, survival resources. The Defendant aims to suggest that the financial repercussions
16 suffered by Plaintiff over the months should be deemed separate incidences unrelated to the hit-
17 and-run crime, but such an assertion is absurd when reasonably observing the order of events.
18

19 Plaintiff asks this Honorable Court to consider the financial burden the Defendant has deflected
20 to the State when the Georgia Crime Victims Compensation Program awarded the Plaintiff funds
21 for relief stating, "After careful review... It is our hope that these funds will assist with easing
22 some of the financial burden that has resulted from being an innocent victim of a violent crime."
23

24 The award issued from the State of Georgia included terms and conditions that obligate Plaintiff
25 to take this legal action against the Defendant, attached hereto as "**Exhibit 3.**" The award letter
26 states, "Acceptance of an award... shall subrogate the state, to the extent of such award, to any
27

1 right or right of action occurring to the claimant or the victim to recover payments..." O.C.G.A.
2 §17-15-12(a), and, "Acceptance of an award...based on damages from a criminal act shall
3 constitute an agreement on the part of the recipient reasonably to pursue any and all civil
4 remedies..." O.C.G.A. §17-15-12(b).

5
6 Plaintiff entreats the Superior Court of Fulton County to honor its fiduciary duty to uphold
7 established law and order by finding the Defendant to be in contempt of the State of Georgia
8 whilst violating O.C.G.A. §40-6-273 and O.C.G.A. §51-1-6. Due to the causes of action arising
9 out of Liberty Mutual claim number 046444805, that brought forth this legal action against the
10 Defendant, Plaintiff prays for relief by Judgment and Court Order.

11
12 In the Superior Court of Fulton County in the State of Georgia, Plaintiff implores this Court to
13 review, interpret, and reach the determination of the fact that the Defendant engaged in specific
14 prohibited actions as evinced in the attached exhibits. Hereby, and herein, this Complaint for
15 Damages pursuant to O.C.G.A. §40-6-273 and O.C.G.A. §51-1-6, Plaintiff seeks judgment that
16 satisfies compensatory damages according to records supporting the amount of \$158,833.90
17 USD (One Hundred Fifty-eight Thousand Eight Hundred Thirty-three Dollars and Ninety Cents.
18 Plaintiff brings forth this suit in the Superior Court of Fulton County to execute judgment against
19 the Defendant, in favor of the Plaintiff, to be awarded compensation for all damages to be paid
20 by the Defendant.
21

22
23 Respectfully submitted,

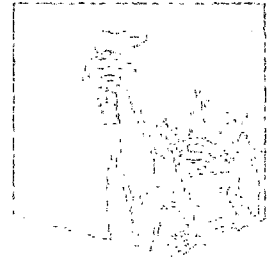
24 Dated this 7th day of February 2022.

25
26
27 
28 Shaun Chappell, *In Pro Se*

EXHIBIT

6

From: Cox, Stacey Stacey.Cox@LibertyMutual.com
Subject: Claim Details - Claim#:046444805-02
Date: 17 March 2022 at 4:44:34
To: S C shaun.chappell@me.com



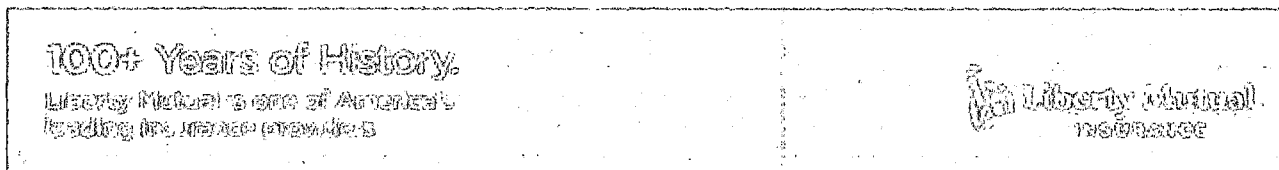
Good Morning Shaun,

I hope you are doing well. I'm reaching out to let you know payment issued to you on 11/18/21 in the amount of \$3,665.38 was returned back to us as undeliverable. This payment was sent to 1284 Jandrive Lane, Atlanta, GA 30316. Please respond as soon as possible with the correct address to re-send the payment to you. Thank you.

For more information about your claim, please visit your [online account](#) or contact me.

Sincerely,

Stacey Cox



Policy underwritten by **Liberty Mutual Personal Insurance Company**

© 2022 Liberty Mutual Insurance Company, 175 Berkeley Street, Boston, MA 02116

Sincerely,

Stacey Cox

Claims Resolution Specialist, APD
Liberty Mutual Insurance & Safeco Insurance

P.O. Box 5014
Scranton, PA 18505-5014

Phone: (407) 430-4947
Fax: 888-268-8840

EXHIBIT

7

Liberty Mutual Personal Insurance Company

175 Berkeley Street Boston, Massachusetts 02116

September 22, 2022

Re: Notice of Judgment and Final Order of Fulton County Superior Court

Greetings Mr. Reginald Hill,

I was forwarded to you by Ms. Stacey Cox regarding matters pertaining to Claim #046444805 arising out of the hit-and-run auto accident committed on August 2, 2021. Surpassing over a one-year period without resolve led to legal action against the Insured. Please find court order attached.

The damages award includes \$250,000.00 in pain and suffering compensation as a result of the Insured's failure to cooperate with the investigation of the claim, further delaying resolve, and exacerbating repercussions suffered by the Claimant. Please be advised, Claimant continues to suffer from delays in achieving settlement resolution with Liberty Mutual Personal Insurance Company.

This correspondence serves as notice of judgment and final order entered against the Insured for a total sum of \$287,655.58. This judgment does not reflect Liberty Mutual Personal Insurance Company's multiple violations of O.C.G.A. 33-6-30, Georgia's Unfair Claims Settlement Practices Act. Further delay to satisfy payment according to the judgment and court order against the Insured in full will result in legal action against the insurance provider, Liberty Mutual Personal Insurance Company, for damages awarded in favor of Claimant against the Insured, and pain and suffering damages in an amount not exceeding \$250,000.00 against the insurance provider for multiple violations of O.C.G.A. 33-6-30 delaying resolve causing further infliction of emotional distress among other consequences and repercussions.

Please advise of method to remit payment or manner in which to proceed.

Sincerely,



Shaun Chappell
Claimant

6087 Camden Forrest Drive Riverdale, GA 30296

Email: shaun.chappell@me.com

Liberty Mutual Personal Insurance Company

175 Berkeley Street Boston, Massachusetts 02116

October 6, 2022

Re: Final Notice of Judgment and Final Order | Payment Demand

Greetings Mr. Reginald Hill,

To reiterate, I was forwarded to you by Stacey Cox regarding matters pertaining to Claim #046444805 arising out of the hit-and-run auto accident committed on August 2, 2021. It has now passed 13 months since Liberty Mutual Personal Insurance Company has accepted full at-fault liability for this claim. Even still, claim adjusters have failed to settle this claim after a final court order has been issued against the Insured.

Mr. Hill, you made a verbal commitment on an answered call to (469) 997-2850 on or about Thursday, September 29, 2022, that I, the Claimant, would be receiving a follow-up call from you by Wednesday, October 5, 2022, regardless of the determination from your manager, Nikki Sasso, to whom you forwarded the demand letter and final order from the Superior Court of Fulton County. I have not received such a returned, follow-up call from either you, nor Nikki Sasso, to settle the claim causing continued delays in resolve and continued suffering from exacerbated repercussions upon the life of Claimant.

The damages award includes \$250,000.00 in pain and suffering compensation as a result of the Insured's failure to cooperate with the investigation of the claim serving as the catalyst for delay. Please be advised, Claimant continues to suffer from delays in achieving settlement resolution with Liberty Mutual Personal Insurance Company as a consequence of internal settlement practices. This correspondence serves as final notice of judgment and final order entered against the Insured, Rose Thompson, for a total sum of \$287,655.58. In order to settle Claim #046444805, this debt must be paid in full by October 20, 2022.

This judgment does not reflect Liberty Mutual Personal Insurance Company's multiple violations of O.C.G.A. 33-6-30, Georgia's Unfair Claims Settlement

6087 Camden Forrest Drive Riverdale, GA 30296

Email: shaun.chappell@me.com

Practices Act. Further delay and failure to settle this claim by satisfying payment according to the judgment and court order against the Insured in full will result in legal action against the insurance provider, Liberty Mutual Personal Insurance Company, for compensatory damages of \$287,655.58 awarded in favor of Claimant against the Insured, and pain and suffering damages in an amount not exceeding \$250,000.00 against the insurance provider for multiple violations of O.C.G.A. 33-6-30 that continue to delay resolve causing further infliction of emotional distress among other consequences and repercussions being suffered by the Claimant in this matter.

Please advise of method to remit payment or manner in which to proceed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shaun Chappell', with a stylized, cursive script.

Shaun Chappell
Claimant

Claim #046444805

6087 Camden Forrest Drive Riverdale, GA 30296

Email: shaun.chappell@me.com

EXHIBIT

8



Stevan A. Miller
(404) 885-6316
smiller@deflaw.com

Gwendolyn D. Havlik
(404) 885-6326
ghavlik@deflaw.com

October 20, 2022

Via E-mail: shaun.chappell@me.com
Shaun Chappell

Re: *Chappell v Rose Thompson*
Superior Court of Fulton County

Dear Mr. Chappell:

As you likely saw in the recently filed Motion, we represent the Defendant in the above-referenced matter. I am in receipt of your October 6, 2022 demand to Liberty Mutual and write to respond to your allegations and demand with respect to the default judgment entered against Ms. Thompson.

We believe the claims against Ms. Thompson are defensible, and for the reasons stated in the Motion to Vacate (filed copy attached), we cannot accept your demand to Ms. Thompson.

Very truly yours,
DREW ECKL & FARNHAM, LLP -

A handwritten signature in black ink, appearing to read "Gwendolyn D. Havlik".

Gwendolyn D. Havlik

Enclosures
13018526v1
15266-245245

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SHAUN CHAPPELL,

Plaintiff,

ROSE THOMPSON,

Defendants.

*
*
*
*
*
*
*

CIVIL ACTION FILE NO: 22CV360742

DEFENDANT'S MOTION TO VACATE AND SET ASIDE JUDGMENT

COMES NOW Defendant Rose Thompson, by way of special appearance and without waiving but while specifically reserving all service, process, venue, jurisdictional, and other defenses, and moves to set aside the default judgment entered September 20, 2022. Because this Motion is filed within the same term of court, the Court has broad discretion in vacating the Order, and need only find a meritorious reason to do so. Even if the Motion were considered under the standards of O.C.G.A. § 9-11-60, however, the judgment should be set aside. As set forth below, the judgment is void because Plaintiff has failed to establish proper service on the Defendant. And even if service was proper, the allegations in the Complaint do not establish liability nor support an award of punitive damages.

In support of this Motion, Defendant relies upon all pleadings of record, and her Brief filed contemporaneously herewith.

Respectfully submitted this 19th day of October 2022.

DREW ECKL & FARNHAM, LLP

/s/ Gwendolyn D Havlik

Gwendolyn D. Havlik, **GA Bar No. 574891**
Attorney for Defendant

303 Peachtree St. NE, Suite 3500
Atlanta, Georgia 30308
Telephone: (404) 885-1400
E-mail: havlikg@deflaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing upon the Plaintiff by filing via Odyssey eFileGA, which will automatically e-mail notification of same to the Plaintiff:

Shaun Chappell (Pro Se)
1284 Jandras Lane
Atlanta, GA 30316
shaun.chappell@me.com

This 19th day of October, 2022.

DREW ECKL & FARNHAM, LLP

/s/ Gwendolyn D Havlik

Gwendolyn D. Havlik, **GA Bar No. 574891**
Attorney for Defendant

303 Peachtree St. NE, Suite 3500
Atlanta, Georgia 30308
Telephone: (404) 885-1400
E-mail: havlikg@deflaw.com

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SHAUN CHAPPELL,

Plaintiff,

ROSE THOMPSON,

Defendants.

*
*
*
*
*
*
*

CIVIL ACTION FILE NO: 22CV360742

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO RECONSIDER AND VACATE
AND SET ASIDE JUDGMENT**

COMES NOW Defendant Rose Thompson, by way of special appearance and without waiving but while specifically reserving all service, process, venue, jurisdictional, and other defenses, and hereby files and serves her Brief in Support of Defendant's Motion to Reconsider and Vacate and Set Aside Judgment, showing the Court as follows:

I. INTRODUCTION

Plaintiff was rear-ended in August 2021. The other driver fled the scene. Plaintiff filed a Complaint, *pro se*, against Rose Thompson on February 15, 2022. The Court entered a Final Order on default judgment on September 20, 2022. Defendant now moves to set aside that Order. Because this Motion is filed within the same term of court, the Court has broad discretion in vacating the Order, and need only find a meritorious reason to do so. Even if the Motion were considered under the standards of O.C.G.A. § 9-11-60, however, the judgment should be set aside. As set forth below, the judgment is void because Plaintiff has failed to establish proper service on the Defendant. And even if service was proper, the allegations in the Complaint do not establish liability nor support an award of punitive damages.

II. FACTS AND PROCEDURAL BACKGROUND

Plaintiff filed this action on February 15, 2022. In the Complaint, Plaintiff alleges the matter arises out of the “hit-and-run crime committed against the Plaintiff” on August 2, 2021. (Complaint). Plaintiff does not allege Defendant Thompson committed any crime. He does not allege she drove the vehicle that hit him. A police report attached to the Complaint as Exhibit 1 lists the driver as unknown and Jakeria Bell as the vehicle owner. (See, Ex. 1). The police report does not in any way implicate or reference Defendant Thompson. There are no factual allegations as to how Rose Thompson is involved in the accident at all.

The majority of the factual allegations in the Complaint concern non-party Liberty Mutual. Specifically, Plaintiff alleges Liberty Mutual Insurance claims adjusters grossly mishandled the claim. The *only allegation* against the Defendant Rose Thompson is Plaintiff alleging he is entitled to damages for her failure to fulfill her legal obligations to cooperate with Liberty Mutual. Plaintiff attaches a Reservation of Rights letter to Thompson dated August 16, 2021. (See, Ex. 2). The remainder of the factual allegations are a description of documents submitted to Liberty Mutual and its response.

In the Complaint, Plaintiff alleges special damages in the amount of \$26,472.38 and compensatory damages for pain and suffering of \$132,361.90, for a total of \$158,834.28. All damages are specifically pled as compensatory. There is *no pleading* for punitive damages.

Plaintiff alleges he served Defendant Thompson via the Non-Resident Motorist Act. On February 24, 2022, Plaintiff filed an Affidavit of Compliance certifying he forwarded by certified mail a copy of the complaint and process to the Defendant. He attached a receipt from the U.S. Postal Service showing it was sent via certified mail. (See, Feb. 24 Notice of Filing). On

March 1, 2022, Plaintiff filed a Certificate of Acknowledgment from the Secretary of State. (*See*, March 1 Notice of Filing). Plaintiff has not filed a return receipt.

On April 20, 2022, Plaintiff filed a Motion for Default Judgment. In the Motion, Plaintiff state he mailed the Complaint and Summons to the Defendant via certified mail on February 24, 2022, and filed the Certificate and Secretary of State's Acknowledgment with the Court. (*See*, Motion). In the Motion, Plaintiff requests damages of \$158,833.90 according to the Complaint. On August 22, 2022, Plaintiff filed an amended Motion for Default Judgment with various exhibits purportedly in support of his damages claim. None of these filings contain a Certificate of Service.

On September 20, 2022, the Court entered a Final Order. In the Order, the Court found Plaintiff was injured as a result of the accident by the Defendant who fled the scene. The Court awarded special damages in the amount of \$56,208.96, and further found Plaintiff was entitled to punitive damages pursuant to O.C.G.A. § 51-12-5.1 for willful misconduct. The Court entered a total award of \$37,655.58 in compensatory damages and \$250,000 in punitive damages. (*See*, Final Order).

Plaintiff forwarded the September 20, 2022, Order to Liberty Mutual, demanding payment of the default judgment. The undersigned counsel was retained, and now files this Motion to Set Aside the judgment.

III. ARGUMENT & CITATION OF AUTHORITY

A) Standard for Setting Aside Judgment in the Same Term of Court

O.C.G.A. § 15-6-3 provides that the term of court for the Superior Court of Fulton County shall commence on the first Monday in January, March, May, July, September, and

November. The Final Order was entered on September 20, 2022, and this Motion is filed within the same term of court.

After the expiration of the term of court in which the default judgment has been entered, the trial court's discretion in setting it aside is limited to the criteria set forth in §9-11-60.

Georgia Receivables, Inc. v. Murray, 240 Ga.App. 676-677 (1999) (citations omitted). A trial court's power to set aside its own judgments during the same term of court, however, is extensive.

A court has plenary control of its judgments, orders, and decrees during the term at which they are rendered, and may amend, correct, modify, or supplement them, for cause appearing, or may, to promote justice, revise, supersede, revoke, or vacate them, as may, in its discretion seem necessary.

(Citation and punctuation omitted.) *Utilicom Supply Assocs., LLC v. Terra Tech, Inc.*, 360 Ga. App. 509, 509 (2021), citing *Lemcon USA Corporation v. Icon Technology Consulting, Inc.*, 301 Ga. 888, 891 (2017); see *Pope v. Pope*, 277 Ga. 333, 334 (2003) (“During the term in which a judgment is entered, a trial court has plenary control over it and has the discretion to set aside the judgment ... for the purpose of promoting justice.”) (citations and punctuation omitted); see also OCGA § 15-1-3 (6).

Essentially, a Court may set aside its judgment within term of court for a meritorious reason. While the discretion to set aside a judgment is not without limits and should be exercised “for some meritorious reason,” it is within the trial court's discretion to determine what amounts to “a meritorious reason” for that purpose. *Pope*, 277 Ga. at 334; see also *Holcomb v. Trax, Inc.*, 138 Ga. App. 105, 107 (1976) (noting further that the question is not whether the order contains a “meritorious reason,” but whether any “meritorious reason” is shown in the record). The Court of Appeals may reverse that discretion only if it is manifestly abused. See *Pope*, 277 Ga. at 334; *Holcomb*, 138 Ga. App. at 107.

1) **The Default Judgment Should Be Set Aside for Lack of Service**

The first meritorious reason to set aside the default judgment is that the record before the Court on default judgment does not establish proper service, as required.

Uniform Superior Court Rule 15 requires:

The party seeking entry of a default judgment in any action shall certify to the court the date and type of service effected as shown by court records and that there has been no defensive pleading from the party against whom the judgment is sought. This certificate shall be in writing and must be attached to the proposed default judgment when presented to the judge for signature...

Under U.S.C.R. 15 the court has a duty to review the record, including the pleadings, return of service, the certificate of counsel, and any evidence in front of the court before granting a default judgment. *Focus Health Care Medical Center, Inc. v. O'Neal*, 253 Ga. App. 298, 300 (2002).

Plaintiff purports to have served Defendant Thompson pursuant to Georgia's Nonresident Motorist Act codified at O.C.G.A. § 40-12-1 *et seq.* (See "Service of Process" section of Plaintiff's Complaint). OCGA § 40-12-2 provides that:

[s]ervice of process upon a nonresident pursuant to Code Section 40-12-1 shall be made by serving a copy of the complaint or other pleading with summons attached thereto on the Secretary of State, his duly authorized agent, or his successor in office, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. Such service shall be sufficient service upon any such nonresident, provided that notice of such service and a copy of the complaint and process are forthwith sent by registered or certified mail or statutory overnight delivery by the plaintiff to the defendant, if his address is known, **and the defendant's return receipt** and the plaintiff's affidavit of compliance with this Code section are appended to the summons or other process and filed with the summons, complaint, and other papers in the case in the court wherein the action is pending.

As stated above, Plaintiff filed two Notices of Filing. First, certifying that he submitted the required documents to the Georgia Secretary of State, and second, that he sent the Complaint

and Summons to the Defendant's known address via certified mail. These filings are required by statute. But what is *not* in the record is Defendant's receipt of the certified mailing.

The Nonresident Motorist Act must be strictly construed and fully complied with before a trial court can obtain jurisdiction over the person of a nonresident defendant. In the absence of service in conformity with the Act, or the waiver of its requirements, any judgment rendered by the court is void.

See Medlin v. Church, 157 Ga.App. 876, 877-878 (1981); *citing Roland v. Shelton*, 106 Ga.App. 581, 585 (1962), emphasis added.

While Plaintiff certified he mailed the Complaint and Summons to the Defendant in accordance with the statute, he has failed to show the Defendant *received* the documents. Accordingly, service is improper. *Nolan v. Jowers*, 280 Ga. App. 815, 817 (2006); *Guerrero v. Tellez*, 242 Ga.App. 354, 356 (2000) ("Only when the notice authorized by statute is actually received can substituted service on an official of the State of venue become the equivalent of personal service") (citation and punctuation omitted); *Brown v. Meyer*, 222 Ga.App. 133 (1996) (same).

Without service, the Court did not acquire jurisdiction over the Defendant. Personal jurisdiction is "the very bedrock of due process." *McRae v. White*, 269 Ga.App. 455 (2004) (requirements for service of process should be strictly construed). Service of process is the mechanism by which a court obtains personal jurisdiction over a defendant and "[i]n the absence of service in conformity with O.C.G.A. § 9-11-4, the court does not obtain jurisdiction over the defendant." *Wilkinson v. Udinsky et al*, 242 Ga.App. 464, 465 (2000). In fact, "***where there has been no legal service on the defendant and no waiver of service, the court has no jurisdiction to enter any judgment in the case unless it be one dismissing the case for lack of jurisdiction.***"

DeJarnette Supply Co. v. F.P. Plaza, Inc., 229 Ga. 625, 625 (1972) (emphasis added); *see also Henry v. Hiawassee Land Company*, 246 Ga. 87 (1980).

Where service is defective a “judgment pursuant to default is absolutely void.” *Dotson v. Luxtron, Inc.*, 155 Ga.App. 504, 505 (1980). Thus, the Default Judgment entered by the Court in the case at bar is *void* and should be set aside.

2) The Default Judgment Should be Set Aside Because The Factual Allegations do not Support Liability

The second meritorious reason to set aside the judgment is that the factual allegations – that Thompson did not cooperate with Liberty Mutual – do not establish liability. Assuming proper service, Defendant Thompson was in a position of default as to the factual allegations contained in the Complaint. “[A] defendant in default is in the position of having admitted each and every material allegation of the plaintiff’s petition except as to the amount of damages alleged.” *Fink v. Dodd*, 286 Ga. App. 363, 364 (2007). However, the default does not automatically establish Plaintiff’s right of recovery and does not preclude the Defendant from showing that under the facts as deemed admitted, no claim existed which would allow Plaintiff to recover. *ServiceMaster Co., L.P. v. Martin*, 252 Ga. App. 751, 752–53 (2001).

“[T]he default operates to admit only the well-pled *factual* allegations of the complaint and the fair inferences and conclusions of fact to be drawn from those allegations.” *Fink v. Dodd*, 286 Ga. App. at 364 (emphasis in original). Default does not operate as an admission of facts not well-pled or incorrect conclusions of law:

It is axiomatic that a default does not result in the admission of allegations that are not well-pled or that are the result of forced inferences. The failure to answer or to appear at trial serves as an admission of the facts alleged in the complaint, but not of the conclusions of law contained therein. So while a default operates as an admission of the well-pled factual allegations in a complaint, it does not admit the legal conclusions contained therein. A default simply does not require blind acceptance of a plaintiff’s erroneous conclusions of law. Nor does a default

preclude a defendant from showing that under the facts as deemed admitted, no claim existed which would allow the plaintiff to recover.

Id., at 365, quoting *Grand v. Hope*, 274 Ga. App. 626, 629 (2005). *Willis v. Allstate Ins. Co.*, 321 Ga. App. 496 (2013) (plaintiff is not entitled to prevail solely because defendant is in default; default does not result in the admission of allegations that are not well-pled or that are the result of forced inferences). Thus, default does not preclude a meritorious defense if the allegations (1) are merely factually unsupported conclusory statements and forced inferences; (2) **are insufficient to support an alleged cause of action**; or (3) the cause of action is otherwise legally invalid.

In *Fink*, the plaintiff sued his employer for wrongful termination and libel and slander. After the defendant failed to answer the complaint, the trial court ruled that liability on the wrongful termination count was conclusively established by the default. *Fink v. Dodd*, 286 Ga. App. at 364. Pertinent to the trial court's holding was that the employer had admitted by default that the plaintiff was an employee of the defendant and that the defendant wrongfully terminated the plaintiff's employment, causing her to suffer damages. *Id.*

However, the complaint did not allege facts showing an enforceable contract of employment, an omission that led to the reversal on appeal. *Fink v. Dodd*, 286 Ga. App. at 366. In reversing the judgment of the trial court, the Court of Appeals held that Georgia is an at-will employment state and, in the absence of any allegations (and corresponding default) to the contrary, the plaintiff had no reasonable expectation of continued employment to establish an actionable wrong. "Because the well-pled allegations of Dodd's complaint failed to establish that she was anything other than an at-will employee, her complaint failed to state a claim for wrongful termination under Georgia law for which she was entitled to recover." *Id.* at 366. Accordingly, the Georgia Court of Appeals reversed the trial court and held that the trial

“ . . . court erred in prohibiting [the defendant] from showing that [the plaintiff] failed to state a claim for wrongful termination and in holding that [the plaintiff] had conclusively established a wrongful termination claim.” *Id.*

The trial court was similarly reversed in connection with the slander claim asserted in the same complaint. *Fink v. Dodd*, 286 Ga. App. at 368. The complaint, which stood as admitted by default, did not identify the persons to whom the allegedly slanderous statements were made – a required factual showing to establish a cause of action for slander. The defendant argued at the trial court level that it was able to challenge the merits of the claim irrespective of default because, while the allegations of the complaint were sufficient as notice pleading, they were conclusory and failed to state the necessary supporting facts with specificity. The trial court disagreed, holding that the elements of slander were conclusively established by default, and prohibited the defendant from making any showing to the contrary. The Court of Appeals held it was reversible error to disallow the defendant’s efforts to establish that the complaint failed to state a claim for slander because the plaintiff did not plead facts from which a jury might reasonably infer the elements of the cause of action. *Id.* at 367-68. *See also Lancaster v. Storage USA Partnership, L.P.*, 300 Ga. App. 567 (2009) (affirming grant of summary judgment to defaulted defendant where the facts deemed admitted did not establish cause of action).

The defense of a claim in default was also addressed in *Blue View Corp. v. Bell*, 298 Ga. App. 277 (2009). The Bells sued Blue View for intentional infliction of emotional distress arising out of an alleged wrongful foreclosure. Blue View went into default when it failed to answer the complaint and a judgment was entered against it for intentional infliction of emotional distress. The judgment was reversed on appeal because the facts pled in the complaint were insufficient to conclusively establish the stated cause of action. The appellate court noted

the long-standing law in Georgia that a default judgment does not preclude a defendant from showing that, under the facts alleged, no claim existed that would allow the sought recovery. *Id.* at 741.

Thus, while Defendant Thompson may be bound by the well-pled facts of the Complaint by virtue of the default if properly served, that is not the end of the analysis. Thompson is not prohibited from raising her defense issues of insufficient allegations and evidence to support a cause of action and the legal fallacies of Plaintiff's theory of recovery.

Here, the only *factual allegations* Plaintiff pleads as to Thompson are that she did not call Liberty Mutual back or cooperate with its investigation. There is no allegation Thompson drove the vehicle involved in the accident. There is no allegation Thompson owned the car or was involved in the accident in any way. In fact, the police report does not list Thompson as the owner of the vehicle, it lists a Jakeria Bell. If Thompson failed to cooperate with Liberty Mutual as alleged, that does not give rise to liability to the Plaintiff.

Plaintiff's conclusions of entitlement to damages are not reasonably inferred from these facts because he has failed to plead the primary consideration for liability arising out of a car accident – that Defendant negligently drove or otherwise. The Court is not forced to “blind[ly] accept] plaintiff's erroneous conclusions of law” that Defendant is somehow liable for a hit and run. *Grand v. Hope*, 274 Ga. App. 626, 629 (2005). Such allegation is entirely speculative with no facts alleged that support, and is plainly a “conclusory allegation” that is not binding on a defendant in a default situation. The Court is obligated to determine whether the allegations that stand admitted by default authorize the recovery sought without further proof. *EnduraCare Therapy Mgmt. v. Drake*, 298 Ga. App. 809 (2009) (holding that forced inferences and erroneous conclusions of law contained in complaint are not treated as true in default, and mere conclusory

allegations of complaint do not establish liability by default); *Standridge v. Spillers*, 263 Ga. App. 401 (2003) (affirming trial courts denial of judgment in favor of plaintiff where defendant was in default because the admitted factual allegations did not support the conclusory allegation necessary to enter judgment). Here, the well-pled facts are insufficient to establish liability, and the default judgment should be set aside.

3) **The Punitive Damages Award Should Be Set Aside**

As stated above, even if Defendant was properly served and in default, only the factual allegations pled are admitted. In the Final Order, the Court awarded the maximum in punitive damages where Plaintiff only specifically pled compensatory damages. Georgia law requires “[a]n award of punitive damages [to] be specifically prayed for in the complaint.” O.C.G.A. § 51-12-5.1(d)(1). “A trial court may not award relief beyond that sought in the complaint when the defendant does not file defensive pleadings and does not appear at trial.” *Hackbart v. Hackbart*, 272 Ga. 26 (2000).

Even if the factual allegations were sufficient to establish liability, they are not sufficient to authorize an award of punitive damages at evidentiary hearing on damages where no evidence on liability for punitive damages was presented at hearing and complaint itself averred no viable claim for punitive damages. *Drug Emporium, Inc. v. Peaks*, 227 Ga. App. 121, 126-27 (1997). Even if Plaintiff had prayed for punitive damages as required, which he did not, the well-pled factual allegations do not establish the requirements for punitive damages, and this judgment should be set aside. *ServiceMaster Co., L.P. v. Martin*, 252 Ga. App. 751, 754 (2001).

C) **Alternative Motion to Set Aside Default Judgment pursuant to O.C.G.A. § 9-11-60(d).**

After the expiration of the term of court in which the default judgment has been entered, the trial court’s discretion in setting it aside is limited to the criteria set forth in §9-11-60.

Georgia Receivables, Inc. v. Murray, 240 Ga.App. 676-677 (1999). As argued above, since this Motion is filed within the term of court, the Court need only find a meritorious reason to set aside the judgment. Defendant shows, additionally, that the more stringent standards of O.C.G.A. § 9-11-60 are met.

Under §9-11-60(d)(3), a motion may be brought to set aside a judgment based upon a nonamendable defect which appears on the face of the record or pleadings, is not cured by verdict or judgment, and where the pleadings show that no legal claim existed. In construing the language of § 9-11-60(d)(3), both the Court of Appeals and the Georgia Supreme Court, “have tended to disregard the proviso that the pleadings must affirmatively show that no claim in fact existed.” *Smyrna Marine, Inc. v. Stocks*, 172 Ga. App. 426, 427 (1984) (citing *Cambren v. Canal Ins. Co.*, 246 Ga. 147 (1980)).

O.C.G.A. § 9-11-60(d)(2) provides additional grounds for a motion to set aside when “fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant” exists. A trial court’s decision regarding a motion to set aside a judgment based upon O.C.G.A. § 9-11-60(d)(2), “will not be reversed absent a showing of manifest abuse of discretion.” *Kent v. State Farm Mut. Auto. Ins. Co.*, 233 Ga. App. 564, 566 (1998) (citing *Young Const. v. Old Hickory House # 3*, 210 Ga. App. 559, 561 (1993)).

In the case at bar, both provisions are met. The record and pleadings do not establish service on the Defendant via the Non-Resident Motorist Act (or otherwise) because the record does not show the Defendant actually received the certified mail. This is required to establish proper service and without it, the judgment is void, and nonamendable, meeting the requirement of § 9-11-60(d)(3).

Even if failing to file the return service was an oversight, Plaintiff's failure to do so was due to fraud, accident, or mistake by the Plaintiff unmixed with the negligence or fault of Defendant Thompson; Defendant Thompson's failure to Answer the Complaint has nothing to do with Plaintiff's failure to serve her. The Plaintiff's duty to properly serve Defendant and comply with the statute arises before the Defendant's duty to Answer. Accordingly, also under O.C.G.A. § 9-11-60(d)(2) the judgment must be set aside.

Respectfully submitted this 19th day of October 2022.

DREW ECKL & FARNHAM, LLP

/s/ Gwendolyn D Havlik

Gwendolyn D. Havlik, *GA Bar No. 574891*

Attorney for Defendant

303 Peachtree St. NE, Suite 3500
Atlanta, Georgia 30308
Telephone: (404) 885-1400
E-mail: havlikg@deflaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing upon the Plaintiff by filing via Odyssey eFileGA, which will automatically e-mail notification of same to the Plaintiff:

Shaun Chappell (Pro Se)
1284 Jandras Lane
Atlanta, GA 30316
shaun.chappell@me.com

This 19th day of October, 2022.

DREW ECKL & FARNHAM, LLP

/s/ Gwendolyn D Havlik

Gwendolyn D. Havlik, *GA Bar No. 574891*

Attorney for Defendant

303 Peachtree St. NE, Suite 3500
Atlanta, Georgia 30308
Telephone: (404) 885-1400
E-mail: havlikg@deflaw.com

EXHIBIT

9

1 Shaun Chappell
2 154 Rainbow Way, Unit 109
3 Fayetteville, GA 30214
4 Email: shaun.chappell@me.com

5 IN THE SUPERIOR COURT OF FULTON COUNTY
6 STATE OF GEORGIA

7 SHAUN CHAPPELL,
8 Plaintiff,

9 vs.

10 ROSE THOMPSON,
11 Defendants

Case No.: 22CV360742
2022CV360742

MOTION FOR SUBSTITUTION OF PARTY
IN OPPOSITION OF MOTION TO VACATE
AND SET ASIDE JUDGMENT

12
13
14 INTRODUCTION IN SUPPORT OF SUBSTITUTION OF PARTY

15 Plaintiff hereby respectfully submits to the Court correspondence from the
16 Defendant's representation in this matter, "Exhibit 1," referencing the "*October 6, 2022 demand*
17 *to Liberty Mutual*," and attached hereto this motion and opposition, "Exhibit 2," to be considered
18 when observing the crime committed against the Plaintiff, the insured policy holder of the
19 vehicle, the insurance company obligated to honor the policy, and the obvious responsible party
20 for the accumulation of damages suffered by Plaintiff, being the "Substitute Party Defendant"
21 willfully coming forward at this time. The referenced correspondence was addressed to Liberty
22 Mutual Personal Insurance Company doing business according to the registered principal address
23 at 175 Berkeley Street Boston, Massachusetts 02116. Exhibit 2 was emailed to Reginald Hill
24 and Stacey Cox under the supervision of Nikki Sasso, all representing claim adjusters
25 mishandling claim number 046444805 pursuant to O.C.G.A. § 33-6-30 to the detriment of

26
27
28 MOTION FOR SUBSTITUTION OF PARTY IN OPPOSITION OF MOTION TO VACATE AND SET ASIDE
JUDGMENT - 1

1 Plaintiff. Liberty Mutual Personal Insurance Company accepted full at-fault liability on
2 September 3, 2021, for the hit-and-run crime committed against Plaintiff and has failed to settle
3 the total loss and personal injury claim with Plaintiff, the Claimant, after nearly fifteen months.
4

5 PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY WITH SUPPORTING
6 AUTHORITY
7

8 Liberty Mutual Personal Insurance Company took liberty to respond with motion
9 to the final order issued by this Court on September 20, 2022, on behalf of the named Defendant,
10 Rose Thompson. Exhibits were presented to the satisfaction of the Court making it known that
11 numerous failed efforts extended from both Liberty Mutual Personal Insurance Company and
12 Plaintiff to correspond and address the insurance claim recorded on August 2, 2021, regarding
13 the abandonment of the insured vehicle after crashing into the rear of Plaintiff's vehicle at
14 approximately 45 mph causing total loss of both vehicles and consequentially, income, personal
15 injury, and significant pain and suffering of Plaintiff brought on this action. It is due to this
16 persistent lack of response from the named Defendant, Rose Thompson, that Liberty Mutual
17 Personal Insurance Company has deemed the named Defendant to be incompetent to answer for
18 herself according to Exhibit 1, and so, moved to respond in place of the named Defendant as
19 quoted, "*We believe the claims against Ms. Thompson are defensible, and for the reasons stated*
20 *in the Motion to Vacate . . . , we cannot accept your demand to Ms. Thompson.*"
21

22
23 O.C.G.A. § 9-11-25 (b) states, "If a party becomes incompetent, the court, upon
24 motion served as provided in subsection (a) of this Code section, may allow the action to be
25 continued by or against his representative." The Court is absolutely justified to grant Plaintiff's
26 motion to substitute Liberty Mutual Personal Insurance Company as the named Defendant in the
27

28 MOTION FOR SUBSTITUTION OF PARTY IN OPPOSITION OF MOTION TO VACATE AND SET ASIDE
JUDGMENT - 2

1 place of Rose Thompson, as her representative in this case due to her purported incompetence to
2 defend herself. Furthermore, Liberty Mutual Personal Insurance Company was received direct
3 correspondence from Plaintiff on October 6, 2022, and instead of corresponding back with
4 Plaintiff directly, recipient opted to acquire legal counsel on behalf of the named Defendant in
5 this case and matter demonstrating explicit interest in Civil Action No. 22CV360742 qualifying
6 as "any transfer of interest." Substitution of Party should be granted according to paragraph II of
7 Defendant's motion, *"Plaintiff forwarded the September 20, 2022, Order to Liberty Mutual,*
8 *demanding payment of the default judgment. The undersigned counsel was retained, and now*
9 *files this Motion to Set Aside the judgment."*

12 The Motion filed by the Defendant into this case on October 19, 2022,
13 communicates unequivocally to the Court that Liberty Mutual Personal Insurance Company is in
14 fact the actual party of interest in this matter, and hereinafter, "Substitute Party Defendant," for
15 the sake of Plaintiff's Motion for Substitution of Party in opposition of Defendant's motion to
16 vacate and set aside judgment. O.C.G.A. § 9-11-25 (c) states, "In case of any transfer of interest,
17 the action may be continued by or against the original party unless the court, upon motion,
18 directs the person to whom the interest is transferred to be substituted in the action or joined with
19 the original party. Service of the motion shall be made as provided in subsection (a) of this Code
20 section." The Court is again warranted in allowing Plaintiff to substitute the name "Rose
21 Thompson" as the named Defendant for "Liberty Mutual Personal Insurance Company" in
22 accordance with the rule pertaining to transfer of interest.

25 OPPOSITION TO MOTION TO VACATE AND SET ASIDE JUDGMENT PREDICATED

26 UPON LIBERTY MUTUAL PERSONAL INSURANCE COMPANY NAMED

27 SUBSTITUTE PARTY DEFENDANT

28 MOTION FOR SUBSTITUTION OF PARTY IN OPPOSITION OF MOTION TO VACATE AND SET ASIDE
JUDGMENT - 3

1 HERENOW Plaintiff comes against Defendant Liberty Mutual Personal Insurance
2 Company substituted for Rose Thompson by motion of Plaintiff in accordance with O.C.G.A. §
3 9-11-25 (b)(c) to refute Substitute Party Defendant's brief in support of Defendant's motion to
4 reconsider and vacate and set aside judgment. Be it known, on September 3, 2021, the Substitute
5 Party Defendant accepted full at-fault liability for the hit-and-run crime committed against
6 Plaintiff on August 2, 2021, recorded with South Fulton Police Department. In paragraphs I and
7 II, the Defendant attempts to blur clear and explicit laws protecting the residents of the State of
8 Georgia against foreign and domestic threats to, but not limited to, travel on roads, streets,
9 highways, and interstates governed by the State of Georgia. The Honorable BELINDA E.
10 EDWARDS of the Superior Court of Fulton County appropriately acknowledged, "*The*
11 *Petitioner was able to ascertain that the Defendant was insured and lived in the State of Florida.*
12 *Service was perfected on the Defendant by O.C.G.A. §40-12-2. The Defendant failed to answer.*"
13 Prior to the Substitute Party Defendant filing motion in this Court, the Defendant is deemed a
14 nonresident motorist and was acknowledged service by the Secretary of State.

15 The Substitute Party Defendant attempts to deflect from the causations of the
16 action including how the Defendant came to be originally named, and eventually states, "*The*
17 *majority of the factual allegations in the Complaint concern non-party Liberty Mutual.*
18 *Specifically, Plaintiff alleges Liberty Mutual Insurance claim adjusters grossly mishandled the*
19 *claim.*" The Substitute Party Defendant acknowledges that the civil action in fact arises
20 predominantly out of the Substitute Party Defendant's contempt for laws enacted in the State of
21 Georgia, specifically, O.C.G.A. § 33-6-30, O.C.G.A. § 33-6-33, and O.C.G.A. § 33-6-34 whilst
22 mishandling claim number 046444805. In Paragraph 1, the Substitute Party Defendant cites
23 authorities in an effort to reinterpret service satisfactory to the Secretary of State of Georgia and

24 MOTION FOR SUBSTITUTION OF PARTY IN OPPOSITION OF MOTION TO VACATE AND SET ASIDE
25 JUDGMENT - 4
26
27
28

1 Superior Court of Fulton County State of Georgia. Substitute Party Defendant acknowledges to
2 be in receipt of the filings against Rose Thompson, retained counsel, and filed motion as the
3 Defendant nullifying the argument of service for the relationship of party to the Plaintiff in this
4 claim has been construed. No meritorious reason exists.
5

6 The Substitute Party Defendant cites authorities in Paragraph 2 under the
7 presumption that, “Thompson did not cooperate with Liberty Mutual – do not establish liability.”
8 Substitute Party Defendant continues on to argue the subject of *factual allegations* under the
9 presumption the damages suffered by Plaintiff were accumulated as a consequence of the
10 Insured’s failure to cooperate with the Insurance Company, when in fact, the Plaintiff argues it is
11 the Substitute Party Defendant’s contempt for Georgia’s State laws that inflicted the majority of
12 the pain and suffering to Plaintiff. The Court rightfully presumed the formerly named Defendant,
13 Rose Thompson, is the same as the Insurance Provider, when issued final order. No meritorious
14 reason exists in support of Substitute Party Defendant.
15

16
17 Plaintiff cites authority in support of damages for pain and suffering prayed for
18 specifically, and properly interpreted and awarded as punitive damages by this Court. Violations
19 of O.C.G.A. §33-6-30, O.C.G.A. §33-6-33, and O.C.G.A. §33-6-34 of the Unfair Claims
20 Settlement Practices enacted to protect Plaintiff and residents of the State of Georgia in specific
21 situations as this, hit-and-run crime committed by nonresident left unsettled by Insurance
22 Provider accepting full, at-fault liability warrants the Court to judge the formerly named
23 Defendant as the Substitute Party Defendant in this special matter. Violations are as follows:
24

25 An insurer violates the Act if it commits the acts listed below “flagrantly and in
26 conscious disregard of [the Act]” or “with such frequency so as to indicate a general business
27

practice to engage in such conduct.” O.C.G.A. § 33-6-33. Substitute Party Defendant Liberty Mutual Personal Insurance Company is liable for damages according to O.C.G.A. § 33-6-34:

1. *Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue.* Plaintiff was never given the Declaration Page of coverage necessary to negotiate settlement.
2. *Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies.*
3. *Failing to adopt and implement procedures for the prompt investigation and settlement of claims arising under its policies.*
4. *Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear.*
5. *Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.*
6. *Refusing to pay claims without conducting a reasonable investigation.*
9. *Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form; provided, however, this paragraph shall not preclude an insurer from obtaining sworn statements if permitted under the policy.*
10. *When requested by the insured in writing, failing in the case of claims denial or offers of compromise settlement to provide promptly a reasonable and*

1 *accurate explanation of the basis for such actions. In the case of claims denials,*
2 *such denials shall be in writing.*

3 The Court clearly based the Final Order decision on the mishandling of the insurance claim
4 rather than the absence of Rose Thompson when stating, "The Plaintiff submitted evidence to
5 support his claim that he was unsuccessful in receiving just compensation from the insured
6 Defendant through her insurance company and has suffered loss in income, property damage,
7 pain and suffering." Although Rose Thompson represents an element of the case, Plaintiff
8 presented to the Court over thirteen months of damage amplifying with time. Substitute Party
9 Defendant continues to invest in efforts to delay resolve of the insurance claim rather than settle
10 with Plaintiff. The Court specifically, "makes an award in this matter of \$250,000.00 for the
11 Defendant's willful misconduct pursuant to O.C.G.A. 51-12-5-1(g) in punitive damages."
12

13 HEREBY this Motion for Substitution of Party In Opposition of Motion to Vacate
14 and Set Aside Judgment, this Court is requested to acknowledge and recognize the originally
15 named Defendant and the Substitute Party Defendant as indistinguishably responsible for
16 damages suffered by Plaintiff, warranting this Court according to O.C.G.A. 51-12-5-1(g),
17 O.C.G.A. § 33-6-33, and O.C.G.A. § 33-6-34 (1-6, 9-10) to deny the Defendant's Motion to
18 Vacate and Set Aside Judgment. Withstanding, the Final Order "judgment in the amount of
19 \$37,655.58 representing compensatory damages and \$250,000.00 representing punitive
20 damages" is in fact consistent with the law and order of this Honorable Court, particularly upon
21 granting of the Plaintiff's Motion for Substitution of Party Defendant.
22

23 IN CONSIDERATION WHEREOF, Plaintiff humbly entreats the Court to
24 understand that Plaintiff is not a legal professional, never attending law school, nor properly
25 educated to defend in this capacity. The Defendant attempts to deflect to procedural
26 MOTION FOR SUBSTITUTION OF PARTY IN OPPOSITION OF MOTION TO VACATE AND SET ASIDE
27 JUDGMENT - 7
28

1 technicalities in an effort to avoid legal consequence for damages suffered and continuing to be
2 suffered by Plaintiff. The Court must empathize and distinguish when interacting with laymen
3 fighting for foundational rights with little to no resources versus established corporations with
4 seemingly infinite budgets and resources. The Substitute Party Defendant attempts to bully the
5 Plaintiff into a lowball, inefficient settlement, and now motions this Honorable Court to serve as
6 an accomplice. In order to fulfill fiduciary duty to the citizens and residents of this State by
7 virtue of upholding the laws enacted to protect residents from such crimes that brought on this
8 civil action, the Superior Court of Fulton County must deny the Substitute Party Defendant's
9 Motion to Vacate and Set Aside Judgment. To the contrary of the Defendant's Motion, this
10 Honorable Court is emboldened to stand on the decision, defend its citizens, and grant Plaintiff's
11 Motion for Substitution of Party Defendant to Liberty Mutual Personal Insurance Company at
12 175 Berkeley Street Boston, Massachusetts 02116, and to uphold the Final Order decision of
13 September 20, 2022, entitling Plaintiff to judgment in the amount of \$37,655.58 representing
14 compensatory damages and \$250,000.00 representing punitive damages.
15
16
17
18

19 Respectfully submitted,

20 Dated: October 24, 2022

21
22 

23 Shaun Chappell Plaintiff *In Pro Se*

EXHIBIT

10

**MAGISTRATE COURT OF CLAYTON COUNTY,
STATE OF GEORGIA****DISPOSSESSORY PROCEEDING**

FirstKey Homes LLC

P.O. Box 451027
Atlanta, GA 31145**PLAINTIFF'S NAME & ADDRESS**Shaun Chappell, and All Other Occupants
6087 Camden Forrest Drive
Riverdale, GA 30296**DEFENDANT'S NAME & ADDRESS**

CASE NO. 2022CM17967

Elizabeth Cruikshank, Esq. 235

FILED CLERK'S USE ONLY
CLAYTON COUNTY, GA
9/1/2022 4:41 PM
Jacqueline D. Wills
CLERK MAGISTRATE COURT

Personally, appeared the undersigned affiant who on oath says that he/she is (owner), (agent), (attorney at law) for plaintiff herein, and that defendant(s) is (are) in possession as tenant of premises at said address as stated above, in Clayton County, the property of said plaintiff. FURTHER: (circle only one)

- (a) THAT tenant fails to pay the rent which is now past due;
(b) THAT tenant holds the premises over and beyond the term for which they were rented or leased to tenant(s);
(c) THAT tenant is a tenant at sufferance;
(d) THAT _____; and plaintiff is entitled to recover any and all rent that may come due until this action is finally concluded.

Plaintiff desires and has demanded possession of the premises and Defendant has failed and refused to deliver said possession. WHEREFORE, Plaintiff DEMANDS:

(a) possession of the premises; (b) past due rent of \$2,350.00; (c) rent accruing up to the date of judgment or vacancy at the rate of \$30.39.17 \ 31: 37.90 per day; (d) \$92.00 Court + \$200.00 Filing Fee + \$19.90 Insurance Fee + \$150.00 Late Fees + \$25.00 NSF.

By affixing this electronic verification, oath, or affidavit to the pleading(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that the statements set forth in the above pleading(s) are true and correct.

Affiant: /s/ Crystal Penton

Date: 09/01/2022

SUMMONS**TO THE SHERIFF OF CLAYTON COUNTY OR HIS LAWFUL DEPUTIES**

GREETINGS: The defendant(s) is/are commanded and required to file an answer to said affidavit in writing or orally in person at the Magistrate Court of Clayton County, Jonesboro, Georgia on or before the seventh (7th) calendar day (including weekends and holidays) after the date of service of the within affidavit and summons. You may also file an answer online at odysseyfilega.com by 11:59 P.M. on or before the last day to answer this summons. EACH defendant is required to file an answer in his or her own name. If such an answer is not made, a Writ of Possession and/or Judgment may issue as provided by law.

Witness the Honorable Keisha Wright Hill, Chief Magistrate of said Court.

Dati Souvannasinh 9/1/2022 4:41 PM

This _____ day of _____, 20____ Deputy Clerk

SHERIFF'S ENTRY OF SERVICE

I have served the foregoing affidavit and summons on the Defendant(s) by delivering a copy of same : () Personally () Notoriously (name) _____ () By posting a copy to the door of the premises and depositing a copy in the U.S. Mail, First Class in an envelope properly addressed, with adequate postage thereon, said copy containing notice to the Defendant(s) to answer at the place stated in said summons.

DATE OF SERVICE

9/17/22

28849

D/Sheriff

IMPORTANT NOTICE

Pursuant to Official Code of Georgia, Section 44-7-55(c), any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property; further, it provides that after execution of the writ, such property shall be regarded as abandoned.

Pursuant to Code of Clayton County, Georgia, Section 82-91 et. seq., if such personal property is not removed from the landlord's property within twenty-four (24) hours of the date and time of the execution of the writ of possession, and if the property otherwise is in violation of the county code, a citation for violation of the county code may issue against the plaintiff.

EXHIBIT

11



**GEORGIA
CORPORATIONS
DIVISION**

GEORGIA SECRETARY OF STATE
**BRAD
RAFFENSPERGER**

[HOME \(/\)](#)

BUSINESS SEARCH

BUSINESS INFORMATION

Business Name:	Liberty Mutual Personal Insurance Company	Control Number:	20001151
Business Type:	Foreign Insurance Company	Business Status:	Active/Compliance
NAICS Code:	Information	NAICS Sub Code:	Cable and Other Subscription Programming
Principal Office Address:	175 Berkeley Street, Boston, MA, 02116, USA	Date of Formation / Registration Date:	7/16/2019
Jurisdiction:	New York	Last Annual Registration Year:	2022

REGISTERED AGENT INFORMATION

Registered Agent Name: **Corporation Service Company**
Physical Address: **2 SUN COURT, SUITE 400, PEACHTREE CORNERS, GA, 30092, USA**
County: **Gwinnett**

[Back](#)

[Filing History](#)

[Name History](#)

[Return to Business Search](#)

SHAWN CHAPPEL
6087 CAMDEN FORREST DRIVE
RIVERDALE, GA 30296



RDC 28



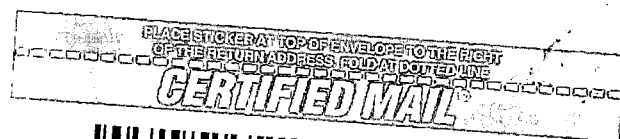
30092

U.S. POSTAGE PAID
FCM LG ENV
ATLANTA, GA
30349
DEC 02, 22
AMOUNT

\$11.33

R2303S100842-20

c/o
CORPORATION SERVICE CO.



7022 1670 0001 4224 6640

ATTN: LIBERTY MUTUAL PERSONAL
INSURANCE COMPANY

2 SUN COURT
SUITE 400

PEACHTREE CORNERS, GA 30092